

**DEVELOPER'S PUBLIC REPORT  
FOR A CONDOMINIUM**

CONDOMINIUM PROJECT NAME	MONTECITO/TUSCANY III (Tuscany 2, Phase 1)
Address	91-1200 Keaunui Drive
Registration Number	6120
Effective Date of Report	<b>October 23, 2006</b>
Developer	Gentry Homes, Ltd.

**Preparation of this Report**

The Developer prepared this report to disclose relevant information, including "material facts", that are reasonably known to the Developer about the condominium project covered by this report. This report has been prepared pursuant to the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended from time to time. The law defines "material facts" to mean "any fact, defect, or condition, past or present that to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale."

This report has not been prepared or issued by the Real Estate Commission or any other governmental agency. The issuance by the Commission of an effective date for this Developer's Public Report (1) does not mean that the Commission approves or disapproves of the project; (2) does not mean that the Commission thinks that either all material facts or all pertinent changes, or both, about the project have been fully or adequately disclosed; or (3) is not the Commission's judgment of the value or merits of the project.

This report may be used by the Developer for promotional purposes only if it is used in its entirety. No person shall advertise or represent that the Commission has approved or recommended the project, this report or any of the documents submitted with Developer's application for registration of this project.

This report will be amended if, after the effective date of this report, any changes, either material or pertinent changes, or both, occur regarding the information contained in or omitted from this report. In that case, the Developer is required to submit immediately to the Commission an amendment to this report or an amended Developer's Public Report, clearly reflecting the changes, together with such supporting information as may be required by the Commission. In addition, the Developer may choose at any time to change or update the information in this report. Annually, at least thirty days prior to the anniversary date of the Effective Date of this report, the Developer shall file an annual report to update the material contained in this report. If there are no changes, the Developer is required to state that there are no changes. The Developer's obligation to amend this report or to file annual reports ends when the initial sales of all units in the project have been completed.

Purchasers are encouraged to read this report carefully and to seek professional advice before signing a sales contract for the purchase of a unit in the project.

Signing a sales contract may legally bind a purchaser to purchase a unit in the project, though a purchaser may have rights to cancel or rescind a sales contract under particular circumstances that may arise.

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*This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request.*

## SPECIAL ATTENTION

**Developer's Master Lease and Option to Purchase.** Developer (Gentry Homes, Ltd.) has a master lease and option agreement to purchase the property covering MONTECITO/TUSCANY III from Gentry Investment Properties. Under the terms of this master lease and option agreement, Gentry Homes, Ltd. has until December 31, 2007 to purchase the property.

**Condominium not created yet/Sales Contract not-binding.** Developer has not yet recorded the Declaration, By-Laws and Condominium Map for this MONTECITO/TUSCANY III (**Tuscany 2, Phase 1**) condominium project (collectively the "condominium documents"). This means that the condominium project has not yet been created and will not exist until the condominium documents are recorded.

As a result, any sales contract entered into by Buyer is non-binding and may be cancelled at any time. Upon cancellation, Buyer shall be entitled to a prompt and full refund of all moneys paid.

The sales contract between Buyer and Developer will become binding when **ALL** of the following events occur:

- The condominium documents have been recorded;
- A copy of an amended public report with an effective date issued by the Real Estate Commission has been delivered to the Buyer, along with copies of the recorded condominium documents; and
- The Buyer has waived Buyer's 30-day right to cancel the sales contract.

**Reserved Unit.** Gentry Homes, Ltd. is developing MONTECITO/TUSCANY III in phases. The interest of the undeveloped phases is currently assigned to the Reserved Unit (Apt. 11). Should Developer fail to develop additional phases, this reserved unit would have a disproportionate share of the common interest and thus hold a controlling interest in the condominium project. Gentry Homes, Ltd. has no intention of not fully developing MONTECITO/TUSCANY III. Gentry Homes, Ltd. has no intention of selling the Reserved Unit, until another Reserved Unit is designated in a subsequent phase or until the entire MONTECITO/TUSCANY III condominium project is completed. See also page 1 of Exhibit "C".

**Recreation Center License.** Residents in MONTECITO/TUSCANY III will have a license to use the existing Recreation Center until the Association is fully formed and merged with the existing Association of Montecito/Tuscany and Montecito/Tuscany II. At that time, Gentry Homes, Ltd. will convey the Recreation Center to the Associations of Apartment Owners of Montecito/Tuscany, Montecito/Tuscany II and Montecito/Tuscany III. Gentry Homes, Ltd. has no intention of not conveying the Recreation Center or of revoking the license agreement prior to the conveyance.

**Recreation Center.** Rules regarding the use of the Recreation Center have been established and must be followed by everyone using the Recreation Center. They are attached as the last 2 pages of Exhibit "G-1".

**Master Community Association.** MONTECITO/TUSCANY III is a condominium project that is also located in the master community association of Ewa by Gentry. As a result, owners in MONTECITO/TUSCANY III are automatically members of the Ewa by Gentry Community Association and are responsible for paying quarterly dues in **addition to** the condominium maintenance fees shown in Exhibit "G". The dues are currently \$75 per quarter for a total of \$300 per year.

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## **General Information On Condominiums**

A condominium is a special form of ownership of real property. To create a condominium in Hawaii after July 1, 2006, the Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, must be followed. In addition, certain requirements and approvals of the county in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land and/or the building(s) and other improvements are leased to the purchaser. The lease for the land usually requires that at the end of the lease term, the lessees (unit owners) deliver their interest in the land to the lessor (fee property owner).

If you are a typical condominium unit owner, you will have two kinds of ownership: (1) ownership in your individual unit; and (2) a percentage interest in the common elements.

You will be entitled to exclusive ownership and possession of your unit. Subject to the documents governing them, condominium units may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift or operation of law.

Your unit will, however, be part of the group of units that comprise the condominium project. Study the project's Declaration of Condominium Property Regime, Bylaws of the Association of Unit Owners, Condominium Map and House Rules, if any, which are attached as exhibits to this report. These documents contain important information on the use and occupancy of the units and the common elements of the project, as well as the rules and regulations of conduct for unit owners, tenants and guests.

## **Operation of the Condominium Project**

The Association of Unit Owners is the entity through which unit owners may take action with regard to the administration, management and operation of the condominium project. Each unit owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as a unit owner. The Board and officers can take certain actions without the vote of the unit owners. For example, the Board may hire and fire employees, increase or decrease maintenance fees, adopt budgets for revenues, expenses and reserves and regulate the use, maintenance, repair and replacement of common elements. Some of these actions may significantly impact the unit owners.

Until there is a sufficient number of purchasers of units to elect a majority of the Board, it is likely at first that the Developer will effectively control the affairs of the Association. It is frequently necessary for the Developer to do so during the early stages of development and the Developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective purchasers should understand that it is important to all unit owners that the transition of control from the Developer to the unit owners be accomplished in an orderly manner and in a spirit of cooperation.

**1. THE CONDOMINIUM PROJECT**

**1.1 The Underlying Land**

Fee Simple or Leasehold Project	<input checked="" type="checkbox"/> Fee Simple	<input type="checkbox"/> Leasehold (attach Leasehold Exhibit)
Developer is the Fee Owner	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Fee Owner's Name if Developer is not the Fee Owner	Gentry Investment Properties. However, Gentry Homes, Ltd. intends to acquire the fee interest prior to any conveyances	
Fee Owner's Address	560 N. Nimitz Hwy., Suite 210, Honolulu, HI 96817	
Address of Project	91-1200 Keaunui Drive	
Address of Project is expected to change because		
Tax Map Key (TMK)	(1) 9-1-10-007 (portion)	
Tax Map Key is expected to change because	recording of subdivision map in the Land Court system.	
Land Area	1.627 acres	
Developer's right to acquire the Property if Developer is not the Fee Owner (describe)	Are stated in a Master Lease a short form of which is recorded as Document Nos. 2234674 & 3143734	

**1.2 Buildings and Other Improvements**

Number of Buildings	16
Floors Per Building	2
Number of New Building(s)	16
Number of Converted Building(s)	0
Principal Construction Materials (concrete, wood, hollow tile, steel, glass, etc.)	concrete, wood, composition siding, composition shingles

**1.3 Unit Types and Sizes of Units**

Unit Type	Quantity	BR/Bath	Net Living Area	Net Other Areas	Other Areas (lanai, garage, etc.)	Area
Plan 1	1	3/2 1/2	1,175.93 s.f.	364.83 s.f.	garage	
Plan 2	3	4/2 1/2	1,439.00 s.f.	396.67 s.f.	garage	
Plan 3	5	4/2 1/2	1,508.73 s.f.	367.91 s.f.	garage	
Plan 4	4	5/2 1/2	1,590.31 s.f.	193.50 s.f.	garage	
Plan 5	3	4/2 1/2	1,554.85 s.f.	442.92 s.f.	garage	
See Exhibit _____						

16	<b>Total Number of Units</b>
----	------------------------------

Note: Net Living Area is the floor area of the unit measured from the interior surface of the perimeter walls of the unit. Other documents and maps may give floor area figures that differ from those above because a different method of determining floor area may have been used.

**1.4 Parking Stalls**

Total Parking Stalls in the Project:	42
Number of Guest Stalls in the Project:	9
Number of Parking Stalls Assigned to Each Unit:	2; Apt. 4 has 3 parking stalls
Attach Exhibit <u>A</u> specifying the Parking Stall number(s) assigned to each unit and the type of parking stall(s) (regular, compact or tandem and indicate whether covered or open).	
If the Developer has reserved any rights to assign or re-assign parking stalls, describe such rights.	
See Exhibit ____.	

**1.5 Boundaries of the Units**

Boundaries of the unit:  
 Each apartment includes the spaces within the underside of the concrete slabs, the outside of the roofs and the outer surfaces of the perimeter walls of the respective apartments. The apartments DO NOT include any pipes, wires, ducts or other utility or service line that services MORE THAN ONE apartment. such pipes and utilities shall be deemed common elements.

**1.6 Permitted Alterations to the Units**

Permitted alterations to the unit (if the unit is defined as a non-physical or spatial portion of the project, also describe what can be built within such portion of the project):  
  
 See Exhibit "B".

**1.7 Common Interest**

Common Interest: Each unit will have a percentage interest in the common elements appurtenant to each unit. This interest is called the "common interest". It is used to determine each unit's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by unit owners. The common interest for each unit in this project, as described in Declaration, is:  
 Described in Exhibit C .  
 As follows:

**1.8 Recreational and Other Common Facilities (Check if applicable):**

<input type="checkbox"/>	Swimming pool
<input type="checkbox"/>	Laundry Area
<input type="checkbox"/>	Storage Area
<input type="checkbox"/>	Tennis Court
<input type="checkbox"/>	Recreation Area
<input type="checkbox"/>	Trash Chute/Enclosure(s)
<input type="checkbox"/>	Exercise Room
<input type="checkbox"/>	Security Gate
<input type="checkbox"/>	Playground
<input checked="" type="checkbox"/>	Other (describe): recreational facilities [See Paragraph 5 on Page 18b]

**1.9 Common Elements**

<p><u>Common Elements:</u> Common elements are those parts of the condominium project other than the individual units and any other real estate for the benefit of unit owners. Although the common elements are owned jointly by all unit owners, those portions of the common elements that are designated as limited common elements (see Section 1.10 below) may be used only by those units to which they are assigned. In addition to the common facilities described in Section 1.8 above, the common elements for this project, as described in the Declaration, are set forth below.</p>	
<p>Described in Exhibit D _____.</p>	
<p>Described as follows:</p>	
<b>Common Element</b>	<b>Number</b>
Elevators	
Stairways	
Trash Chutes	

**1.10 Limited Common Elements**

<p><u>Limited Common Elements:</u> A limited common element is a portion of the common elements that is reserved for the exclusive use of one or more but fewer than all units in the project.</p>
<p>Described in Exhibit D _____.</p>
<p>Described as follows:</p>

**1.11 Special Use Restrictions**

<p>The Declaration and Bylaws may contain restrictions on the use and occupancy of the units. Restrictions for this project include, but are not limited to, those described below.</p>	
<input checked="" type="checkbox"/>	Pets: Limited to two in number and subject to compliance with House Rules
<input type="checkbox"/>	Number of Occupants:
<input checked="" type="checkbox"/>	Other: Apts. cannot be used for transient or hotel; "timeshare" or "time interval" use
<input type="checkbox"/>	There are no special use restrictions.

**1.12 Encumbrances Against Title**

<p>An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of a unit in the project. Encumbrances shown may include blanket liens which will be released prior to conveyance of a unit (see Section 5.3 on Blanket Liens).</p>
<p>Exhibit E _____ describes the encumbrances against title contained in the title report described below.</p>
<p>Date of the title report: August 1, 2006</p>
<p>Company that issued the title report: Island Title Corporation</p>

**1.13 Uses Permitted by Zoning and Zoning Compliance Matters**

Uses Permitted by Zoning						
	Type of Use	No. of Units	Use Permitted by Zoning		Zoning	
<input checked="" type="checkbox"/>	Residential	16	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	A-1	
<input type="checkbox"/>	Commercial		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
<input type="checkbox"/>	Mix Residential/Commercial		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
<input type="checkbox"/>	Hotel		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
<input type="checkbox"/>	Timeshare		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
<input type="checkbox"/>	Ohana		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
<input type="checkbox"/>	Industrial		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
<input type="checkbox"/>	Agricultural		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
<input type="checkbox"/>	Recreational		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
<input type="checkbox"/>	Other(specify)		<input type="checkbox"/> Yes	<input type="checkbox"/> No		
Is/Are this/these use(s) specifically permitted by the project's Declarations or Bylaws?			<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No		
Variances to zoning code have been granted.			<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		
Describe any variances that have been granted to zoning code.						

**1.14 Other Zoning Compliance Matters**

Conforming/Non-Conforming Uses, Structures and Lots	
<p>In general, a non-conforming use, structure or lot is a use, structure or lot that was lawful at one time but that does not now conform to present zoning requirements. Under present zoning requirements, limitations may apply to extending, enlarging or continuing the non-conformity and to altering and repairing non-conforming structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.</p> <p>If a variance has been granted or if uses, structures or lots are either non-conforming or illegal, the purchaser should consult with county zoning authorities as to possible limitations that may apply in situations such as those described above.</p> <p>A purchaser may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure or lot.</p>	

	Conforming	Non-Conforming	Illegal
Uses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Structures	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lot	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<p>If a non-conforming use, structure or lot exists in this project, this is what will happen under existing laws or codes if the structure is damaged or destroyed:</p>   
--

**1.15 Conversions**

<p><b>Developer's statements regarding units that may be occupied for residential use and that have been in existence for five years or more.</b></p>	<p><input type="checkbox"/> Applicable  <input checked="" type="checkbox"/> Not Applicable</p>
<p>Developer's statement, based upon a report prepared by a Hawaii-licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the units:</p>	
<p>Developer's statement of the expected useful life of each item reported above:</p>	
<p>List of any outstanding notices of uncured violations of any building code or other county regulations:</p>	
<p>Estimated cost of curing any violations described above:</p>	

<p><b>Verified Statement from a County Official</b></p>
<p>Regarding any converted structures in the project, attached as Exhibit _____ is a verified statement signed by an appropriate county official which states that either:</p> <p>(A) The structures are in compliance with all zoning and building ordinances and codes applicable to the project at the time it was built, and specifying, if applicable:</p> <ul style="list-style-type: none"> <li>(i) Any variances or other permits that have been granted to achieve compliance;</li> <li>(ii) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes; and</li> <li>(iii) Any violations of current zoning or building ordinances or codes and the conditions required to bring the structure into compliance;</li> </ul> <p>or</p> <p>(B) Based on the available information, the county official cannot make a determination with respect to the foregoing matters in (A) above.</p>
<p>Other disclosures and information:</p>

**1.16 Project In Agricultural District**

<p><b>Is the project in an agricultural district as designated by the land use laws of the State of Hawaii?</b>  <b>If answer is "Yes", provide information below.</b></p>	<p><input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p>
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable state and county land use laws? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation.</p>	
<p>Are the structures and uses anticipated by the Developer's promotional plan for the project in compliance with all applicable county real property tax laws? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If the answer is "No", provide explanation and state whether there are any penalties for noncompliance.</p>	
<p>Other disclosures and information:</p>	

**1.17 Project with Assisted Living Facility**

<p><b>Does the project contain any assisted living facility units subject to Section 321-11(10), HRS?</b>  <b>If answer is "Yes", complete information below.</b></p>	<p><input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p>
<p>Licensing requirements and the impact of the requirements on the costs, operations, management and governance of the project.</p>	
<p>The nature and the scope of services to be provided.</p>	
<p>Additional costs, directly attributable to the services, to be included in the association's common expenses.</p>	
<p>The duration of the provision of the services.</p>	
<p>Other possible impacts on the project resulting from the provision of the services.</p>	
<p>Other disclosures and information.</p>	

## 2. PERSONS CONNECTED WITH THE PROJECT

<p><b>2.1 Developer</b></p>	<p>Name: GENTRY HOMES, LTD. Address: 560 N. Nimitz Hwy., Suite 210, Honolulu, HI 96817</p> <p>Business Phone Number: 808-599-5558 E-mail Address: www.gentryhawaii.com</p>
<p>Names of officers and directors of developers that are corporations; general partners of a partnership; partners of a limited liability partnership (LLP); or a manager and members of a limited liability company (LLC) (attach separate sheet if necessary).</p>	<p>Robert W. Brant -- President/CEO Toshimasa Hosoda -- Senior Vice President -- Planning John Shaw -- Senior Vice President -- Architecture Dawn Suyenaga -- Vice President/Secretary Michael J. Brant -- Vice President -- Engineering Richard N. Hobson -- Vice President -- Sales and Marketing Quentin Machida -- Vice President Victoria Slovak -- Treasurer</p>
<p><b>2.2 Real Estate Broker</b></p>	<p>Name: Gentry Homes, Ltd. Address: 560 N. Nimitz Hwy., Suite 210, Honolulu, HI 96817</p> <p>Business Phone Number: 808-599-5558 E-mail Address: www.gentryhawaii.com</p>
<p><b>2.3 Escrow Depository</b></p>	<p>Name: Island Title Corporation Address: 1132 Bishop Street, Suite 400, Honolulu, HI 96813</p> <p>Business Phone Number: 808-531-0261</p>
<p><b>2.4 General Contractor</b></p>	<p>Name: Gentry Builders, LLC Address: 560 N. Nimitz Hwy., Suite 210, Honolulu, HI 96817</p> <p>Business Phone Number: 808-599-5558</p>
<p><b>2.5 Condominium Managing Agent</b></p>	<p>Name: Hawaiiana Management Company, Ltd. Address: 711 Kapiolani Blvd., Suite 700, Honolulu, HI 96813</p> <p>Business Phone Number: 808-593-9100</p>
<p><b>2.6 Attorney for Developer</b></p>	<p>Name: Dawn Suyenaga Address: 560 N. Nimitz Hwy., Suite 211, Honolulu, HI 96817</p> <p>Business Phone Number: 808-599-5558</p>

### 3. CREATION OF THE CONDOMINIUM AND CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances (Regular System) or filing in the Office of the Assistant Registrar of the Land Court, or both, a Declaration of Condominium Property Regime, a Condominium Map and the Bylaws of the Association of Unit Owners. The Condominium Property Act (Chapter 514B, HRS), the Declaration, Bylaws and House Rules control the rights and obligations of the unit owners with respect to the project and the common elements, to each other, and to their respective units.

#### 3.1 Declaration of Condominium Property Regime

The Declaration of Condominium Property Regime contains a description of the land, buildings, units, common interests, common elements, limited common elements, and other information relating to the condominium project.		
Land Court or Bureau of Conveyances	Date of Document	Document Number

Amendments to Declaration of Condominium Property Regime		
Land Court or Bureau of Conveyances	Date of Document	Document Number

#### 3.2 Bylaws of the Association of Unit Owners

The Bylaws of the Association of Unit Owners govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Unit Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters that affect how the condominium project will be governed.		
Land Court or Bureau of Conveyances	Date of Document	Document Number

Amendments to Bylaws of the Association of Unit Owners		
Land Court or Bureau of Conveyances	Date of Document	Document Number

#### 3.3 Condominium Map

The Condominium Map contains a site plan and floor plans, elevations and layout of the condominium project. It also shows the floor plan, unit number and dimensions of each unit.		
Land Court Map Number		
Bureau of Conveyances Map Number		
Dates of Recordation of Amendments to the Condominium Map:		

**3.4 House Rules**

The Board of Directors may adopt rules and regulations (commonly called "House Rules") to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the Developer. Changes to House Rules do not need to be recorded to be effective.

The House Rules for this project:		
Are Proposed		<input checked="" type="checkbox"/>
Have Been Adopted and Date of Adoption		<input type="checkbox"/>
Developer does not plan to adopt House Rules		<input type="checkbox"/>

**3.5 Changes to the Condominium Documents**

Changes to Condominium Documents: Changes to the Declaration, Bylaws and Condominium Map are effective only if they are duly adopted and recorded. Where permitted, the minimum percentages of the common interest that must vote for or give written consent to changes to the Declaration, Bylaws and Condominium Map are set forth below. The percentages for any individual condominium project may be more than the minimum set by law if the Declaration or Bylaws for the project so provide.

Document	Minimum Set by Law	This Condominium
Declaration	67%	75%
Bylaws	67%	67%

**3.6 Rights Reserved by the Developer to Make Changes to the Condominium Project or Condominium Documents**

<input type="checkbox"/>	No rights have been reserved to the Developer to change the Declaration, Bylaws, Condominium Map or House Rules (if any).
<input checked="" type="checkbox"/>	<p>Developer has reserved the right to change the Declaration, Bylaws, Condominium Map and House rules (if any) and to add to or merge the project or to develop the project in one or more phases, and such rights are summarized as follows:</p> <p>See Exhibit "F".</p>

## 4. CONDOMINIUM MANAGEMENT

### 4.1 Management of the Common Elements

Management of the Common Elements: The Association of Unit Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.

The Initial Condominium Managing Agent for this project is (check one):

<input checked="" type="checkbox"/>	Not affiliated with the Developer
<input type="checkbox"/>	None (self-managed by the Association)
<input type="checkbox"/>	The Developer or an affiliate of the Developer
<input type="checkbox"/>	Other (explain)

### 4.2 Estimate of the Initial Maintenance Fees

Estimate of the Initial Maintenance Fees: The Association will make assessments against your unit to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your unit and the unit may be sold through a foreclosure proceeding. Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

Exhibit G contains a breakdown of the estimated annual maintenance fees and the monthly estimated maintenance fee for each unit, certified to have been based on generally accepted accounting principles, with the Developer's statement as to when a unit owner shall become obligated to start paying the unit owner's share of the common expenses.

### 4.3 Utility Charges to be Included in the Maintenance Fee

If checked, the following utilities are included in the maintenance fee:

<input checked="" type="checkbox"/>	Electricity for the common elements
<input type="checkbox"/>	Gas for the common elements
<input checked="" type="checkbox"/>	Water
<input checked="" type="checkbox"/>	Sewer
<input type="checkbox"/>	TV cable
<input checked="" type="checkbox"/>	Other (specify) Refuse Collection

### 4.4 Utilities to be Separately Billed to Unit Owner

If checked, the following utilities will be billed to each unit owner and are not included in the maintenance fee:

<input checked="" type="checkbox"/>	Electricity for the Unit only
<input type="checkbox"/>	Gas for the Unit only
<input type="checkbox"/>	Water
<input type="checkbox"/>	Sewer
<input checked="" type="checkbox"/>	TV cable
<input type="checkbox"/>	Other (specify)

## 5. SALES DOCUMENTS

### 5.1 Sales Documents Filed with the Real Estate Commission

Sales Documents on file with the Commission include, but are not limited to, the following:	
<input checked="" type="checkbox"/>	Specimen Sales Contract Exhibit <u>H</u> contains a summary of the pertinent provisions of the sales contract. Including but not limited to any rights reserved by the Developer.
<input checked="" type="checkbox"/>	Escrow Agreement dated: October 12, 2004, amended September 21, 2006 Name of Escrow Company: Island Title Corporation Exhibit <u>I</u> contains a summary of the pertinent provisions of the escrow agreement.
<input type="checkbox"/>	Other

### 5.2 Sales to Owner-Occupants

If this project contains three or more residential units, the Developer shall designate at least fifty percent (50%) of the units for sale to Owner-Occupants.

<input checked="" type="checkbox"/>	The sales of units in this project are subject to the Owner-Occupant requirements of Chapter 514B.
<input type="checkbox"/>	Developer has designated the units for sale to Owner-Occupants in this report. See Exhibit _____.
<input checked="" type="checkbox"/>	Developer has or will designate the units for sale to Owner-Occupants by publication.

### 5.3 Blanket Liens

Blanket Liens: A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project or more than one unit that secures some type of monetary debt (such as a loan) or other obligation. Blanket liens (except for improvement district or utility assessments) must be released as to a unit before the developer conveys the unit to a purchaser. The purchaser's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the unit to the purchaser.

<input type="checkbox"/>	There are <u>no blanket liens</u> affecting title to the individual units.
<input checked="" type="checkbox"/>	There are <u>blanket liens</u> that may affect title to the individual units.

Type of Lien	Effect on Purchaser's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance
Mortgage	Lender has priority over Buyer's rights under a sales contract, and has a right to terminate sales contracts upon foreclosure of its mortgage before an apartment sale is closed.

### 5.4 Construction Warranties

Construction Warranties: Warranties for individual units and the common elements, including the beginning and ending dates for each warranty (or the method of calculating them), are as set forth below:

Building and Other Improvements:  
See Exhibit "J"

Appliances:  
See Exhibit "J"

**5.5 Status of Construction, Date of Completion or Estimated Date of Completion**

<p>Status of Construction: Construction is expected to start in August, 2006. The estimated date of construction completion is January 2007.</p>
<p>Completion Deadline: If a sales contract for a unit is signed before the construction of the unit has been completed, or, in the case of a conversion, completion of any repairs, does not occur by the completion deadline set forth below, one of the remedies available to a purchaser is a cancellation of the purchaser's sales contract. The sales contract may include a right of the Developer to extend the completion deadline for force majeure as defined in the sales contract. The sales contract may also provide additional remedies for the purchaser.</p>
<p>Completion Deadline for any unit not yet constructed, as set forth in the sales contract: January 31, 2007.</p>
<p>Completion Deadline for any repairs required for a unit being converted, as set forth in the sales contract:</p>

**5.6 Developer's Use of Purchaser Deposits to Pay for Project Construction Costs Before Closing or Conveyance**

The Developer is required to deposit all moneys paid by purchasers in trust under a written escrow agreement with a Hawaii licensed escrow depository. Escrow shall not disburse purchaser deposits to the Developer or on behalf of the Developer prior to closing, except if a sales contract is canceled or if Developer has met certain requirements, which are described below.

**5.6.1 Purchaser Deposits Will Not Be Disbursed Before Closing or Conveyance**

<input checked="" type="checkbox"/>	<p>The Developer hereby declares by checking the box to the left that it shall use its own funds to complete the construction of the condominium project by the date indicated in Section 5.5 of this report, and the Developer, pursuant to its own analysis and calculations, certifies that it has sufficient funds to complete the construction of the condominium project. If the box to the left is checked, Sections 5.6.2 and 5.7, which follow below, will not be applicable to the project.</p>
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**5.6.2 Purchaser Deposits Will Be Disbursed Before Closing**

<p>Hawaii law provides that, if certain statutory requirements are met, purchaser deposits in escrow under a binding sales contract may be used before closing to pay for certain project costs. For this project, the Developer indicates that purchaser deposits may be used for the following purposes (check applicable box):</p>	
<input type="checkbox"/>	<p>For new construction: to pay for project construction costs described in the Developer's budget and approved by the Developer's lender or an otherwise qualified, financially disinterested person; or</p>
<input type="checkbox"/>	<p>For conversions: to pay for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance and legal fees, and for other incidental expenses.</p>

In connection with the use of purchaser deposits (check Box A or Box B):

<p><b>Box A</b></p> <input type="checkbox"/>	<p>The Developer has submitted all information and documents required by law and the Commission prior to the disbursement of purchaser deposits before closing. This means that the Developer may use such deposits before closing. If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>If Box A is checked, you should read and carefully consider the following notice, which is required by law:</p> <p><b><u>Important Notice Regarding Your Deposits: Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase.</u></b></p>
<p><b>Box B</b></p> <input type="checkbox"/>	<p>The Developer has <u>not</u> submitted all information and documents required by law and the Commission, and, until all such information and documents are submitted, thus, the Developer cannot use purchaser deposits.</p> <p>If the Developer later submits all information and documents required by law and the Commission for the use of purchaser deposits, then the Developer must provide an amendment to this report or an amended developer's public report to each purchaser who has signed a sales contract. At such time, the <b><u>Important Notice Regarding Your Deposits</u></b> set forth immediately above will apply to all purchasers and will be restated in the amendment to this report or an amended developer's public report. When an effective date for such an amendment or an amended developer's public report is issued, <b><u>you will not have the right to rescind or cancel the sales contract by reason of such submission and amendment.</u></b> (This, however, does not affect your right to rescind for material changes or any other right you may have to rescind or cancel the sales contract, as described in Section 5.8 below.) If the Developer decides not to use purchaser deposits before closing, the Developer does not need to amend this report.</p> <p>You should understand that, although the <b><u>Important Notice Regarding Your Deposits</u></b> set forth above does not currently apply to you, it might apply to you in the future, and, therefore, you should read and carefully consider it now to ensure that you understand the risk involved in deciding whether to proceed with your purchase.</p>

**Material House Bond.** If the Developer has submitted to the Commission a completion or performance bond issued by a material house instead of a surety as part of the information provided prior to the use of purchaser deposits prior to closing or conveyance of a unit, the Developer shall disclose the same below and disclose the impact of any restrictions on the Developer's use of purchaser deposits.

## 5.7 Rights Under the Sales Contract

Before signing the sales contract, prospective purchasers should carefully review all documents relating to the project. These include but are not limited to the documents listed below. Items 2, 3 and 4 are made a part of this public report, as well as Item 5, if any, and are being delivered to you with this report.

- |    |  |
|----|--|
| 1. | <b>Developer's Public Report</b>   |
| 2. | <b>Declaration of Condominium Property Regime (and any amendments)</b>   |
| 3. | <b>Bylaws of the Association of Unit Owners (and any amendments)</b>   |
| 4. | <b>Condominium Map (and any amendments)</b>  |
| 5. | House Rules, if any  |
| 6. | Escrow Agreement   |
| 7. | Hawaii's Condominium Property Act (Chapter 514B, HRS, as amended) and Hawaii Administrative Rules (Chapter 16-107, adopted by the Real Estate Commission, as amended), provided that rules and regulations under Chapter 514B have not yet been adopted. |
| 8. | Other:   |

Copies of the condominium and sales documents and amendments made by the Developer are available for review through the Developer or through the Developer's sales agent, if any. The Condominium Property Regime law (Chapter 514B, HRS) and the Administrative Rules (Chapter 107, HAR), are available online. Please refer to the following sites:

Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)

Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

## 5.8 Purchaser's Right to Cancel or Rescind a Sales Contract

A purchaser's right to cancel a sales contract or to rescind a sales contract may arise under varying circumstances. In the sections below, some circumstances that will give rise to a purchaser's right to cancel or rescind are described, together with what a purchaser must do if the purchaser wishes to exercise any of the rights.

### 5.8.1 When a Sales Contract becomes Binding and Purchaser's 30-Day Right to Cancel a Sales Contract

A sales contract signed by a purchaser and the developer will not become binding on a purchaser or the Developer until the following events have taken place:

- (1) The purchaser has signed the sales contract.
- (2) The Developer has delivered to the purchaser a true copy of the developer's public report with an effective date issued by the Commission, together with all amendments to the report as of the date of delivery, and the project's recorded Declaration and Bylaws, House Rules (if any), the Condominium Map and any amendments to them to date (all of which are a part of the developer's public report). If it is impracticable to include a letter-sized Condominium Map, the Developer must provide written notice of an opportunity to examine the Condominium Map.
- (3) The Developer has delivered to the purchaser a notice of the purchaser's 30-day cancellation right on a form prescribed by the Commission.
- (4) The purchaser does at least one of the following:
  - (a) Waives the purchaser's right to cancel the sales contract within 30 days from receipt of the notice of the purchaser's 30-day cancellation right; or

- (b) Allows the 30-day cancellation period to expire without exercising the right to cancel; or
- (c) Closes the purchase of the unit before the 30-day cancellation period expires.

The purchaser or the Developer may cancel the sales contract at any time during the 30-day cancellation period, and the sales contract will be canceled and the purchaser's deposits returned to the purchaser, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.

### **5.8.2 Right to Cancel a Sales Contract if Completion Deadline Is Missed**

In addition to the purchaser's 30-day cancellation right described in Section 5.8.1 above, when a sales contract is signed before completion of construction of a project, the purchaser will have the right to cancel if the unit is not completed by certain deadlines. In conversion projects, there must be a deadline for completion of any required repairs. Every sales contract shall contain an agreement of the Developer that the completion of construction shall occur on or before the completion deadline, and that completion deadline is set forth in this report in Section 5.5. The sales contract shall provide that the purchaser may cancel the sales contract at any time after the specified completion deadline, if completion of construction does not occur on or before the completion deadline, as the same may have been extended. Upon a cancellation, the purchaser's deposits shall be refunded, less any escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.00.

### **5.8.3 Purchaser's Right to Rescind a Binding Sales Contract After a Material Change**

If a "material change" in a project occurs after a purchaser has signed a sales contract that has become binding, the purchaser will have a 30-day right to rescind after notification and description of the material change. A material change is defined in the Condominium Property Act to be any change that "directly, substantially and adversely affects the use or value of (1) a purchaser's unit or appurtenant limited common elements; or (2) those amenities of the project available for the purchaser's use."

The purchaser will be informed of the material change by the developer on a form prescribed by the Commission containing a description of the material change.

After notice of the material change, the purchaser may waive the right to rescind by:

- (1) Checking the waiver box on the rescission form; or
- (2) Letting the 30-day rescission period expire, without taking any action to rescind; or
- (3) Closing the purchase of the unit before the 30-day rescission period expires.

The rescission form must be signed by all purchasers of the affected unit and delivered to the developer no later than midnight of the 30<sup>th</sup> calendar day after the purchasers received the rescission form from the developer. Purchasers who validly exercise the right of rescission shall be entitled to a prompt and full refund of any moneys paid.

A rescission right shall not apply in the event of any additions, deletions, modifications and reservations including, without limitation, the merger or addition or phasing of a project, made pursuant to the terms of the project's Declaration.

These provisions shall not preclude a purchaser from exercising any rescission rights pursuant to a contract for the sale of a unit or any applicable common law remedies.

## 6. MISCELLANEOUS INFORMATION NOT COVERED ELSEWHERE IN THIS REPORT

1. **Ongoing Construction.** Construction of MONTECITO/TUSCANY III will be ongoing while units are being occupied. This ongoing construction will create dust, noise and increased traffic in the vicinity of occupied units. Certain hazardous conditions relating to the construction may also exist for a period of time. Additionally development of the areas around MONTECITO/TUSCANY III will cause dust in and around the Project for several years as development in Ewa by Gentry continues. Buyer understands that Developer will make efforts to minimize the dust but that it is an inevitable result of the ongoing construction.

2. **Ongoing Sales Activity.** Sales activities for MONTECITO/TUSCANY III and neighboring communities will be ongoing. This will result in increased traffic and noise in the vicinity of the sales office located in Montecito/Tuscany. Portions of the common areas of MONTECITO/TUSCANY III may be used for signage and other sales activities for a period of time while sales are ongoing.

3. **General Disclosures.** Buyer understands and acknowledges that certain activities will occur on and about MONTECITO/TUSCANY III (“Activities Affecting MONTECITO/TUSCANY III”) as follows:

(a) **Neighboring Construction Sites and Major Roadways.** MONTECITO/TUSCANY III is bordered on the mauka side by an existing residential community. The ewa side of MONTECITO/TUSCANY III borders on Fort Weaver Road. Fort Weaver Road is a major thoroughfare for Ewa and Ewa Beach residents traveling to or from the H-1 Freeway. Commuters will experience delays on Fort Weaver Road and on roads feeding into it, particularly during peak morning and evening hours. Developer will be extending Keaunui Drive from Ho’omahana Street through Fort Weaver Road and building improvements at the future Fort Weaver Road Keaunui Drive intersection. A future residential and commercial site will also be constructed on the other side of Fort Weaver Road. Developer will also be building a future residential site below Keaunui Drive extension and a future park site on the Diamond Head side of MONTECITO/TUSCANY III. All of this construction activity will create dust, noise and increased traffic in and around MONTECITO/TUSCANY III. Developer will make efforts to minimize dust but dust is an inevitable result of the ongoing construction.

(b) **Military Areas.** MONTECITO/TUSCANY III is located in the vicinity of the West Loch Branch of the Lualualei Naval Magazine (“West Loch”) which in the event of military action may be a sensitive area. The Navy has denoted an area east of MONTECITO/TUSCANY III as an Explosive Safety Hazard Zone in connection with munitions which may be loaded onto ships at West Loch. The Navy has represented that the boundary of said area represents the probable limit of any impact on the adjacent community. This area, which extends to West Loch, will have restricted development required by the Navy. The Navy has leased portions of this area for agricultural use, which will create dust and noise. Because this area is undeveloped, there may also be pests, such as cockroaches and rodents, for a period of time. Geiger Road and Iroquois Point Road may also be used by the Navy to transport aircraft and munitions.

(c) **Agricultural Land.** MONTECITO/TUSCANY III is located upon land previously used for the cultivation of sugar cane. Land near or adjacent to MONTECITO/TUSCANY III may continue to be used for the cultivation and harvesting of agricultural products, which may cause dust and noise. Crops may be burned when seasonally appropriate. The Hawaii Right-to-Farm Act (H.R.S. Ch. 165) and Hawaii law limit the types of farm activities that may be deemed a nuisance.

**(d) Airport.** MONTECITO/TUSCANY III is located in the vicinity of a commercial airport (Honolulu International Airport) and a possible future airport at the former Barber's Point Naval Air Station and Buyer is aware that there is a likelihood of noise from planes passing overhead or nearby. The 1987 Noise Contour Map of the Honolulu International Airport Master Plan shows MONTECITO/TUSCANY III located in an area subject to the noise levels of 55 Ldn.

**(e) Honouliuli Treatment Plant.** MONTECITO/TUSCANY III is located near the Honouliuli Wastewater Treatment Plant, which generates odors and noise and which will be expanded in the future to accommodate increased usage.

**(f) Mold.** Mold and mold spores are present throughout the environment, and residential home construction is not, and cannot be, designed to exclude mold spores. All mold is not necessarily harmful, but certain strains of mold have been shown to have adverse health effects in susceptible persons. Moisture is the only mold growth factor that can be controlled in a residential setting. Buyer should take positive steps to reduce or eliminate the occurrence of moisture in and around the house upon the Property. Developer is not responsible for any mold or mold spores present in the environment or in the house upon the Property.

**(g) FEMA.** The Federal Emergency Management Agency ("FEMA") has not yet reviewed MONTECITO/TUSCANY III area to determine whether the Property is within a flood hazard zone. If FEMA later determines that the Property is within a flood hazard area, then your lender may require you to obtain flood insurance.

**(h) Golf Courses.** The Coral Creek Golf Course has been constructed on the west side of Fort Weaver Road. The Coral Creek Golf Course is also a designated flowage easement for drainage purposes. The Hawaii Prince Golf Course has been constructed on the east side of Fort Weaver Road. The road leading to the Hawaii Prince Golf Course will abut the Property. Both the Coral Creek Golf Course and the Hawaii Prince Golf Course are collectively referred to as the "golf courses".

There may be hazards that may cause injuries and damages to persons and/or property on MONTECITO/TUSCANY III such as errant or stray golf balls, the use of reservoirs and water hazards up to six feet (6 ft.) deep, periodic spraying or other treatment of the area with pesticides, insecticides, herbicides, fungicides and fertilizers, surface water runoff, noise, dust and unpleasant odors. Irrigation of the golf courses may be with water from storm retention basins or reclaimed water from the Honouliuli Wastewater Treatment Plant. Any reclaimed water is required to be treated according to Department of Health guidelines. Tournaments and other special events held on the golf courses may also impact the community. Buyer waives any rights or claims which Buyer might otherwise have against the Seller, Coral Creek Golf, Inc., Seibu Hawaii, Inc. and any future owners/operators of the golf courses because of these conditions.

Owners in MONTECITO/TUSCANY III will not have an ownership interest, a right to use any facilities or a right to enter the property by virtue of their ownership of a Home nor by membership in the Ewa by Gentry Community Association.

**(i) Affordable Housing.** Many homes in the Ewa by Gentry community have been developed to meet the City and County of Honolulu's (the "City's") affordable housing requirements. Homes that meet the City's definition of "affordable" are or will be located in various communities throughout Ewa by Gentry. Some of the homes in the Coronado and Palm Villas condominium projects are subject to shared appreciation and buy/back provisions and rental restrictions associated with the affordable housing requirements, and there may be other communities that will be developed in the future in Ewa by Gentry that will have similar restrictions.

(j) **Irrigation Water.** Water used to irrigate the common area landscaping in the Ewa by Gentry community will come from either a nonpotable well service or may be from reclaimed water from the Honouliuli Wastewater Treatment Plant. Any reclaimed water is required to be treated according to Department of Health guidelines.

(k) **Future Commercial Site.** A development consisting of light industrial and commercial uses will be built in the future along Geiger Road across from the Honouliuli Wastewater Treatment Plant. There is also a future commercial site planned near the future intersection of Fort Weaver Road and Keaunui Drive. These developments may result in increased traffic, noise and other impacts in the vicinity.

These Activities Affecting MONTECITO/TUSCANY III may cause some unpleasant odors, surface water runoff, noise, dust, smoke and other unpleasant effects that may bother or be a nuisance to Buyer and other occupants and invitees of the Project. In the Apartment Deed, each Buyer, for himself, his heirs, personal and legal representatives and assigns, will release, indemnify, defend and hold harmless Developer, the Thomas H. Gentry Trust, a California Trust dated February 11, 1986, as amended, and related entities, the Trustees under the Will and of the Estate of James Campbell, Deceased, and Oahu Sugar Company, Limited, Coral Creek Golf, Inc., Seibu Hawaii, Inc. and any future owners and/or operators of the golf courses, and their respective officers, directors, employees, agents, successors, successors-in-trust, and assigns from any and all liability, claims, losses, damages, or expenses, including attorneys' fees, arising from any such impairment of the use and enjoyment of the Property, loss of market value of the Property, or property damage or personal injury to the property or person of Buyer, or Buyer's tenants, lessees, family, servants, guests, invitees, licensees, agents, employees, or other persons who may use the Property. However, the person or entity whose actions or omissions are the direct cause of any damage to Buyer shall be responsible for the consequences or results of its own gross negligence, willful misconduct or violation of applicable law. Buyer hereby irrevocably agrees to suffer and permit all actions and consequences incident to the Activities affecting MONTECITO/TUSCANY III described above.

**4. Project Phases and Future Merger.** Tuscany 2, Phase 1 is the first phase of the MONTECITO/TUSCANY III condominium project. The Developer intends to complete MONTECITO/TUSCANY III in approximately seven (7) phases, for a total of one hundred sixteen (116) units, but is not obligated to build beyond Tuscany 2, Phase 1.

MONTECITO/TUSCANY III is part of an overall area covered by that certain Declaration of Intent to Merge dated August 16, 2005 and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3314878 (the "Declaration of Intent to Merge"). The area covered by the Declaration of Intent to Merge is called the "Merged Area" in this public report. The Declaration of Intent to Merge also includes Montecito/Tuscany and Montecito/Tuscany II. Montecito/Tuscany and Montecito/Tuscany II are two (2) condominium communities that have been administratively merged and have a combined total of two hundred and forty (240) units.

The Developer intends to administratively merge MONTECITO/TUSCANY III with Montecito/Tuscany and Montecito/Tuscany II for the purposes of sharing common area costs shared by the various communities (such as a recreation center, roadways, street lighting and landscaping). The Developer estimates that this administrative merger would go into effect February 1, 2007. The combined associations of Montecito/Tuscany, Montecito/Tuscany II and Montecito/Tuscany III would be united under one association of apartment owners called "MONTECITO/TUSCANY".

**5. Recreation Center.** Lot 16021, Map 1252, Land Court Application No. 1069 has a Recreation Center built on it for the use of all residents living in the Merged Area. The Recreation Center opened in September 2005. The Recreation Center consists of a swimming pool, three (3) pavilions and landscaped areas. Developer plans to execute a non-exclusive license to the Association of Apartment

Owners of MONTECITO/TUSCANY III to use the Recreation Center around the time the first residents move into the project. A draft of this non-exclusive license is attached to this public report as Exhibit "G-1". The license will be non-exclusive, because Developer has already granted a similar non-exclusive license to the Associations of Apartment Owners of Montecito/Tuscany and Montecito/Tuscany II. Once the Merged Area is fully developed, Developer intends to convey the Recreation Center to the several associations of apartment owners within the Merged Area as tenants in common. Each association's ownership share of the Recreation Center will be based upon the association's proportionate share of the total number of apartments in the Merged Area. The several associations of apartment owners shall have the duty and obligation to accept and maintain the Recreation Center at the common expense of all of the owners of apartments within the Merged Area.

**6. Ewa by Gentry Community.** All apartment owners in MONTECITO/TUSCANY III are automatically members of the Ewa by Gentry Community Association, a non-profit Hawaii corporation. All owners are therefore subject to the restrictions, covenants and conditions of the Ewa by Gentry Community Area Declaration of Covenants, Conditions and Restrictions which govern the entire Ewa by Gentry community. The Community Association enforces the provisions of the Declaration of Covenants, Conditions and Restrictions to ensure a well maintained, safe and aesthetically pleasing community. A copy of the Declaration of Covenants, Conditions and Restrictions is available at the sales office. The Declaration of Covenants, Conditions and Restrictions can also be viewed online at [www.ebgca.net](http://www.ebgca.net) under the "Introduction" section. Each owner pays dues to the Community Association in the amount of approximately \$75 per quarter for a total of \$300 a year. The maintenance fees reflected in Exhibit "G" of this public report do not include the dues payable to the Ewa by Gentry Community Association.

**7. Condominium Map.** The sizes and configurations of the limited common areas and common areas reflected on the Condominium Map are approximations only. Actual sizes and configurations may vary due to the placement and location of utilities and due to varying terrain surrounding each building.

**8. Setback Requirement.** There is a five foot (5 ft.) setback requirement along the back yard areas of Apartments 1 to 11, inclusive. Only landscaping is allowed in this five foot (5ft) setback area. Cement is not considered landscaping.

**9. Lanais.** Apartment 2 is not eligible for the optional covered lanai due to setback requirements.

**10. Garage Disclosure.** Each MONTECITO/TUSCANY III home has an attached garage. The garage (for all plans **except the Tuscany 2, Plan 4**) meets City and County of Honolulu standards to accommodate one full sized and one compact sized parking stall. The Tuscany 2, Plan 4 apartment type includes a garage that meets City and County of Honolulu standards to accommodate one compact sized parking stall. All Tuscany 2 Plan 4 type apartments also come with a limited common element adjacent standard parking stall. Buyers who have an oversized vehicle (a van, a truck) or who have more than one full sized vehicle should inspect the garage thoroughly to ensure that the garage can accommodate their vehicles. Garages shall be used for parking operational vehicles only and for incidental storage. Some homes may have an additional parking area in the limited common area adjacent to the home. The additional parking area is for vehicles only and may not be used for storage purposes.

**11. Irrigation Disclosure.** Water used to irrigate the common area landscaping in MONTECITO/TUSCANY III (which include portions of the front yard of each unit) will come from either a nonpotable well service or may be from reclaimed water from the Honouliuli Wastewater Treatment Plant. Any reclaimed water is required to be treated according to Department of Health guidelines.

**12. Trash Collection.** Not all homes in MONTECITO/TUSCANY III will have curbside trash collection. Specifically, the buyers of Apartment 3 will need to take their trash can to the designated trash collection area in front of Apartment 4, as shown on the Condominium Map and on the individual apartment plan. Trash cans can be put out for trash collection the night before trash is collected and must be removed by the end of that day.

**13. Street Parking.** As stated in the Rules and Regulations of the Association of Apartment Owners of MONTECITO/TUSCANY III, there is no parking in the roadways, other than in designated stalls. The Condominium Map for MONTECITO/TUSCANY III does not show any designated stalls in the roadways.

**14. Private Drainage.** MONTECITO/TUSCANY III is serviced by a private drainage system that connects to the City and County of Honolulu's municipal sewer system. As such, Federal regulations prohibit the following from being discharged into the Project's drainage system:

- (a) domestic wastewater;
- (b) industrial wastewater;
- (c) any debris, refuse or solid waste or yard waste;
- (d) chlorinated swimming pool water;
- (e) washwater from vehicle and equipment cleaning; and
- (f) oil and petroleum products.

Owners are prohibited from discharging any of the above into the Project's drainage system.

The Association is solely responsible for the maintenance and upkeep of the Project's drainage system. It shall cooperate with the Developer in assuming the Developer's National Pollutant Discharge Elimination System (NPDES) Permit No. H10021229 and shall be responsible for enforcing the terms and conditions of the NPDES Permit.

The Developer declares subject to the penalties set forth in Section 514B-69, HRS, that this project conforms to the existing underlying county zoning for the project, zoning and building ordinances and codes and all applicable permitting requirements adopted by the county in which the project is located, all in accordance with Sections 514B-5 and 32(a)(13), HRS.

For any conversion, if any variances have been granted, they are specified in Section 1.14 of this report, and, if purchaser deposits are to be used by the Developer to cure any violations of zoning, permitting requirements or rules of the county in which the project is located, the violation is specified in Section 1.15 of this report, along with the requirements to cure any violation, and Section 5.5 specifies the date by which the cure will be completed.

The Developer hereby certifies that all the information contained in this report and the exhibits attached to this report and all documents to be furnished by the Developer to purchasers concerning the project have been reviewed by the Developer and are, to the best of the Developer's knowledge, information and belief, true, correct and complete. The Developer hereby agrees promptly to amend this report to report any pertinent or material change or both in any information contained in this report and to file annually a report to update the material contained in this report at least 30 days prior to the anniversary date of the effective date of this report.

GENTRY HOMES, LTD.  
Printed Name of Developer

By:  August 22, 2006  
Duly Authorized Signatory\* Date

DAWN SUYENAGA, Vice President/Secretary  
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, City and County of Honolulu

Planning Department, City and County of Honolulu

**\*Must be signed for a corporation by an officer; for a partnership or limited liability partnership (LLP) by the general partner; for a limited liability company (LLC) by the manager or an authorized member; and for an individual by the individual.**

EXHIBIT "A"

PARKING

**Plans 1, 2, 3 & 5 Apartment Type – Two-Car Garage Parking:**

**Apartments:** 1, 3, 4, 6, 7, 8, 10, 11, 12, 13, 15, 16

All apartments (except for the Tuscany 2, Plan 4 type apartments) include a garage that meets the City and County of Honolulu standards to accommodate **one (1) full sized** and **one (1) compact sized** parking stall.

**Plan 4 Apartment Type – One Car Garage Parking and Adjacent Parking Stall:**

**Apartments:** 2, 5, 9, 14

All Tuscany 2, Plan 4 apartments include a garage that accommodated **one (1) compact sized** parking stall. These apartments also come with a **standard sized** uncovered parking stall located adjacent to the garage, as shown on the Condominium Map.

**Assigned Parking Stall:**

**Apartment:** 4

Apartment 4 will have an additional parking stall located adjacent to the front of the Apartment that is full sized and uncovered, as shown on the Condominium Map, for its exclusive use.

Buyers with oversized vehicles, including vans and trucks, or whose cars are not a compact size, should inspect the garage thoroughly to ensure that the garage can accommodate their vehicles.

**Visitor Parking Stalls:**

There are nine (9) visitor parking stalls.

**EXHIBIT "B"**

**PERMITTED ALTERATIONS TO APARTMENTS**

Additions, alterations or improvements solely within an apartment or within a limited common element appurtenant to and for the exclusive use of the apartment may be made by the apartment owner only with the approval of the Board of Directors of the Association of Apartment Owners.

Optional floor plans exist for all plan types and are shown on the Condominium Map. Buyers may choose optional floor plans subject to certain construction cut-off dates.

There is a five foot (5 ft.) set back requirement along the back yard areas of Apartments 1 through 11. Only landscaping (no cement, no buildings) can be in this five foot (5 ft.) set back area. Apartment 2 is not eligible for the optional covered lanai due to insufficient rear yard setback.

**EXHIBIT "C"**

**APARTMENT DESCRIPTION AND COMMON INTEREST**

<b>Apt. No.</b>	<b>Plan Type</b>	<b>Net Living Area (sq. ft.)</b>	<b>Net Covered Entry (sq. ft.)</b>	<b>Net Garage Area (sq. ft.)</b>	<b>Common Interest</b>
1	Tuscany 2 – Plan 3	1,438.73	31.07	367.91	0.862066
2	Tuscany 2 – Plan 4	1,523.31	16.91	193.50	0.862065
3	Tuscany 2 – Plan 5	1,484.85	27.71	442.92	0.8621
4	Tuscany 2 – Plan 5	1,484.85	27.71	442.92	0.8621
5	Tuscany 2 – Plan 4	1,523.31	16.91	193.50	0.862065
6	Tuscany 2 – Plan 3	1,438.73	31.07	367.91	0.862066
7	Tuscany 2 – Plan 2	1,404.00	15.57	396.67	0.862066
8	Tuscany 2 – Plan 3	1,438.73	31.07	367.91	0.862066
9	Tuscany 2 – Plan 4	1,523.31	16.91	193.50	0.862065
10	Tuscany 2 – Plan 2	1,404.00	15.57	396.67	0.862066
11	Tuscany 2 – Plan 3	1,438.73	31.07	367.91	87.068912*
12	Tuscany 2 – Plan 5	1,484.85	27.71	442.92	0.8621
13	Tuscany 2 – Plan 3	1,438.73	31.07	367.91	0.862066
14	Tuscany 2 – Plan 4	1,523.31	16.91	193.50	0.862065
15	Tuscany 2 – Plan 1	1,175.93	23.59	364.83	0.862066
16	Tuscany 2 – Plan 2	1,404.00	15.57	396.67	0.862066

\* See Note below

**NOTE:** All of the interest that will later be allocated to future phases of MONTECITO/TUSCANY III is currently allocated to Apartment 11 (defined as the “Reserved Unit” in the Declaration) so that the total common interests adds up to one hundred percent (100%).

Upon the creation of an additional phase of MONTECITO/TUSCANY III as specified in Section 4 of the Declaration, the Reserved Unit will be redesignated to be a unit in the new phase and Apartment 11 will have a common interest of 0.862066.

As nearly as practicable, the common interest for each residential Apartment was determined on a per unit basis. Developer reserves the right to make adjustments so that the total common interest count equals exactly one hundred percent (100%).

**DESCRIPTION OF FLOOR PLANS**

**Tuscany 2, Plan 1 (3 Bedroom, 2 ½ Bath)**

Two story three bedroom, two and one-half bath Apartment with the kitchen, dining room, living room and half bathroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom, a master bathroom, two additional bedrooms and another bathroom. The Apartment also includes an entry porch and a two car garage containing one standard and one compact parking stall. An optional covered lanai built off of the dining and living rooms is depicted on the Option 1 drawings of the Condominium Map. Developer shall indicate when it files the “as-built” verified statement referenced in Section 19.3(a) of the Declaration, which Apartments were built with an optional covered lanai. All Apartments have a fenced back yard limited common element. The Apartment has a net living area of approximately 1,175.93 square feet, a net entry porch area of approximately 23.59 square feet and a net garage area of approximately 364.83 square feet.

**Tuscany 2, Plan 2 (4 Bedroom, 2 ½ Bath)**

Two story four bedroom, two and one half bath Apartment with the kitchen, dining room, living room and half bathroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom, a master bathroom, three additional bedrooms and another bathroom. The Apartment also includes an entry porch and a two car garage containing one standard and one compact parking stall. An optional covered lanai built off of the dining and living rooms is depicted on the Option 1 drawings of the Condominium Map. An optional expanded Master Bedroom, which combines the Master Bedroom with Bedroom No. 2, is depicted on the Option 2 drawings of the Condominium Map. Developer shall indicate when it files the “as-built” verified statement referenced in Section 19.3(a) of the Declaration, which Apartments were built with optional floor plans. All Apartments have a fenced back yard limited common element. The Apartment has a net living area of approximately 1,439.00 square feet, a net entry porch area of approximately 15.57 square feet and a net garage area of approximately 396.67 square feet.

**Tuscany 2, Plan 3 (4 Bedroom, 2 ½ Bath)**

Two story four bedroom, two and one half bath Apartment with the kitchen, dining room, living room, laundry room and half bathroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom, a master bathroom, three additional bedrooms and another bathroom. The Apartment also includes an entry porch and a two car garage containing one standard and one compact parking stall. An optional covered lanai built off of the dining and living rooms is depicted on the Option 1 drawings of the Condominium Map. An optional expanded Master Bedroom, which combines the Master Bedroom with Bedroom No. 2, is depicted on the Option 2 drawings of the Condominium Map. Developer shall indicate when it files the “as-built” verified statement referenced in Section 19.3(a) of the Declaration, which Apartments were built with optional floor plans. All Apartments have a fenced back yard limited common element. The Apartment has a net living area of approximately 1,508.73 square feet, a net entry porch area of approximately 31.07 square feet and a net garage area of approximately 367.91 square feet.

**Tuscany 2, Plan 4 (5 Bedroom, 3 Bath)**

Two story five bedroom, three bath Apartment with the kitchen, dining room, living room, laundry room, bathroom and a bedroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom, a master bathroom, three additional bedrooms and another bathroom. The Apartment also includes an entry porch and a one car garage containing one compact parking stall. An optional covered lanai built off of the dining and living rooms is depicted on the Option 1 drawings of the Condominium Map. An optional expanded Master Bedroom, which combines the Master Bedroom with Bedroom No. 2, is depicted on the Option 2 drawings of the Condominium Map. Developer shall indicate when it files the “as-built” verified statement referenced in Section 19.3(a) of the Declaration, which Apartments were built with optional floor plans. All Apartments have a fenced back yard limited common element, an appurtenant uncovered standard size parking stall located adjacent to the garage. The Apartment has a net living area of approximately 1,590.31 square feet, a net entry porch area of approximately 16.91 square feet and a net garage area of approximately 193.50 square feet.

**Tuscany 2, Plan 5 (4 Bedroom, 2 ½ Bath)**

Two story four bedroom, two and one half bath Apartment with the kitchen, dining room, living room, laundry room and half bathroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom, a master bathroom, three additional bedrooms and another bathroom. The Apartment also includes a two car garage containing one standard and one compact parking stall. An optional covered lanai built off of the dining and living rooms is depicted on the Option 1 drawings of the Condominium Map. A shortened variation of this lanai is depicted on the Option 1A drawings of the Condominium Map. An optional expanded Master Bedroom, which combines the Master Bedroom with Bedroom No. 2, is depicted on the Option 2 drawings of the Condominium Map. Developer shall indicate when it files the “as-built” verified statement referenced in Section 19.3(a) of the Declaration, which Apartments were built with optional floor plans. All Apartments have a fenced back yard limited common

element. The Apartment has a net living area of approximately 1,554.85 square feet, a net entry porch area of approximately 27.71 square feet and a net garage area of approximately 442.92 square feet.

**The Reserved Unit**

The Apartment is a two story four bedroom, two and one-half bath Apartment with the kitchen, dining room, living room, laundry room and half bathroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom, a master bathroom, three additional bedrooms and another bathroom. The Apartment also includes an entry porch and a sales office area. The Apartment has a net floor area of approximately 1,438.73 square feet and the balance of the relative square footage of the living area to be developed in the future phases as provided in Section 17A.2(B) of the Declaration.

**NOTE:** The sizes and configurations of the fenced yard reflected on the Condominium Map are approximations only. Actual sizes and configurations may vary due to the placement and location of utilities and due to varying terrain surrounding each building.

## EXHIBIT "D"

### COMMON AND LIMITED COMMON ELEMENTS

#### **COMMON ELEMENTS:**

1. The land covered by Lots 1 to 7, as shown on DPP File No. 2005/Sub-180 being a portion of Lot 16635, Map 1292 of Land Court Application 1069. The land is further described in Exhibit "A" of the Declaration. The encumbrances on the land are further described in Exhibit "E" of this public report.  
**Note:** This Exhibit will be updated once the Land Court version of DPP File No. 2005/Sub-180 has recorded and Gentry Homes, Ltd. has acquired the fee interest in the above referenced lots.
2. All yards, grounds, planting areas, gates, fences, retaining walls (if any), trash collection areas and walkways;
3. All access lanes, roads, curbs, sidewalks and street lights;
4. Visitor parking stall nos. 1 to 5, inclusive, and 111 to 114, inclusive, as shown on the Condominium Map;
5. Installations for services such as pipes, cables, conduits, ducts, electrical equipment, wiring and other central appurtenant transmission facilities and installations over, under or across the Project which serve more than one Apartment for services such as power, light, gas, hot water, cold water, sewage, drainage, telephone, radio and television signal distribution, if any;
6. Any apparatus and installations existing for common use, such as tanks, pumps, irrigation lines, motors, fans, compressors, ducts, vents and other such installations and apparatus; and
7. All other parts of the Project necessary or convenient to its existence, maintenance and safety or normally in common use.

#### **LIMITED COMMON ELEMENTS:**

8. Driveway appurtenant to the apartment;
9. Apartments 3, 5, 9 and 14 have an uncovered parking stall adjacent to the garage;
10. Apartment 4 has an uncovered parking stall adjacent to its limited common yard area;
11. Mailbox bearing the same designations as the apartment;
12. Yard areas as shown on the Condominium Map; and
13. All other common elements which are rationally related to less than all of the apartments in the Project.

EXHIBIT "E"

ENCUMBRANCES AGAINST TITLE

1. Title to all mineral and metallic mines reserved to the State of Hawaii.
2. Restrictions, covenants and conditions as contained in that certain Ewa by Gentry Community Area Declaration of Covenants, Conditions and Restrictions dated July 21, 1988, recorded in said Office of the Assistant Registrar as Document No. 1568352, as amended by instrument dated May 30, 1989, recorded in the Office of said Assistant Registrar as Document No. 1652869, as further amended by instrument dated June 21, 1991, recorded in the Office of the Assistant Registrar as Document No. 1888053, and as may be further amended from time to time. The Property was made subject to the above Declaration of Covenants, Conditions and Restrictions by that certain Declaration of Addition of Real Property dated July 20, 2000, recorded in said Office of the Assistant Registrar as Document No. 2639394 (also affects other property).
3. Declaration of Restrictions dated August 22, 1989, recorded in said Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1661671. *[This Declaration made by the Trustees of the Estate of James Campbell, Deceased, a former owner of the property, notifies all future purchasers of the property of the proximity of the Hawaii Prince Golf Course and of the potential hazards listed in Item 3(h) on page 18a of this public report and requires all purchasers to indemnify the Estate and Seibu Hawaii, Inc. (the owner of the golf course).]*
4. Terms and provisions of that certain unrecorded Master Lease with Options to Purchase Real Property, as amended and restated, by and between Gentry Development Company, a Hawaii limited partnership (now known as Gentry Investment Properties) as Lessor/Optionor and Gentry Homes, Ltd., a Hawaii corporation, as Lessee/Optionee, a short form of which was dated March 16, 1995 and recorded in said Office of the Assistant Registrar as Document No. 2234674. Said Option Agreement was amended by that certain Short Form Amendment to Master Lease with Options to Purchase Real Property dated July 26, 2004 but effective September 1, 2002 and recorded in said Office of the Assistant Registrar as Document No. 3143734. *(Gentry Homes, Ltd., intends to acquire the property, prior to the recordation of the condominium documents.)*
5. Declaration of Covenants, Conditions and Restrictions on Use and Reservations (Fairways Properties) dated September 30, 2003, recorded in said Office of the Assistant Registrar as Document No. 3002894. *[This Declaration limits the type of development that can be constructed on the property to residential use, including non-commercial recreational facilities, utilities, public or private schools, churches, parks, golf course, agricultural use, roadways, drainage and sewer facilities and other infrastructure necessary to serve a residential development. Reserves all subsurface water and water rights to the Estate of James Campbell, Deceased, except for the drilling of non-potable wells to service the property.]*
6. Terms and conditions of that certain Deed and Use Restrictions dated September 30, 2003, recorded in said Office of the Assistant Registrar as Document No. 3002895. *[Reiterates the restrictions stated in Item 5 above and specifically references Document No. 3002894.]*
7. Terms and conditions of that certain Declaration of Confirmation of certain Exceptions, Reservations and Encumbrances Affecting Property (Fairways Properties) dated September 30, 2003 and recorded in the Bureau of Conveyances as Document No. 2003-212181. *[References an unrecorded agreement between the Estate of James Campbell, Deceased and Seibu Hawaii, Inc.]*
8. Terms and conditions of that certain Notice of Imposition of Conditions by the Land Use Commission dated December 1, 2003 and recorded in the Bureau of Conveyances as Document No. 2003-269381. *[This Notice states that the State Land Use Commission reclassified the*

*property from the State Land Use Agricultural District to the State Land Use Urban District subject to certain conditions that would be set forth in Item 9 below. This Notice states that Item 9, upon its recordation, will supersede this Notice.]*

9. Declaration of Land Use Conditions dated February 9, 2004, recorded in said Office of the Assistant Registrar as Document No. 3068154. *[This Declaration states that the State of Hawaii Land Use Commission has reclassified the property as part of the State Land Use Urban District subject to the Developer building certain infrastructure, selling a certain portion of the development pursuant to an affordable housing program, setback requirements and archaeological/historic preservation requirements should any previously undiscovered artifacts be subsequently discovered.]*
10. Unilateral Agreement and Declaration for Conditional Zoning dated March 16, 2004, recorded in said Office of the Assistant Registrar as Document No. 3084363. *[This document was required by the City and County of Honolulu in order to obtain a change of zoning. It requires the Developer to develop and to submit to the City master site, drainage, landscape and affordable housing plans. It also requires the Developer to construct certain infrastructure and establishes an annual reporting requirement of Developer's progress in these areas.]*
11. Amended Judgment and Final Order of Condemnation in Civil No. 62550 in the Circuit Court of the First Circuit of the State of Hawaii, dated April 1, 1987 and filed as Document No. 1455569 regarding abutters' rights of access; *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-180 (the Montecito/Tuscany III Phase subdivision map).)*
12. Restriction of Access Rights along Fort Weaver Road as shown on Map 422 of said Land Court Application No. 1069, as set forth by Land Court Order No. 86200, filed on September 11, 1987; *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-180 (the Montecito/Tuscany III Phase subdivision map).)*
13. Easement 1500, for access purposes, as shown on Map 432 of said Land Court Application No. 1069, as set forth by Land Court Order No. 89384, filed on April 25, 1988; *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
14. Access in favor of Lot 4197, as shown on Map 432 of said Land Court Application 1069, over said Easement 1500, as set forth by Land Court Order No. 89384, filed on April 25, 1988; *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
15. Grant of Nonexclusive Easement (Access) in favor of Seibu Hawaii, Inc., a Hawaii corporation, dated December 29, 1988, for access to Ft. Weaver Road appurtenant to said Lot 4197, over and across said Easement 1500, recorded in said Office of the Assistant Registrar as Document No. 1604419; *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
16. Easement 1989, for waterline purposes, as shown on Map 453 of said Land Court Application No. 1069, as set forth by Land Court Order No. 92212, filed on December 30, 1989; *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-180 (the Montecito/Tuscany III Phase subdivision map).)*

17. Grant of Non-Exclusive Easement in favor of the City and County of Honolulu for use by the Board of Water Supply, for water and water facilities over and across Easement 1500, dated February 20, 1992, recorded in said Office of the Assistant Registrar as Document No. 1918380; *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
18. Grant of Easement dated March 3, 1994, for water and waterlines over, under, across and through said Easement 1989, recorded in said Office of the Assistant Registrar as Document No. 2237817, in favor of the City and County of Honolulu for use by the Board of Water Supply; *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-180 (the Montecito/Tuscany III Phase subdivision map).)*
19. Mortgage and Security Agreement dated August 1, 2004, made by and between Gentry Homes, Ltd. and Gentry Investment Properties, as Mortgagor, and Bank of Hawaii, as Agent, as Mortgagee, recorded as Document No. 3148449. *[Developer intends to record a document to release this encumbrance prior to conveyance of apartment to buyer.]*
20. Assignment of Sales Contracts and Sales Proceed dated August 1, 2004, made by and between Gentry Homes, Ltd., a Hawaii corporation, as Assignor, and Bank of Hawaii, as Agent, as Assignee, recorded as Document No. 2004-162053. *[Developer intends to record a document to release this encumbrance prior to conveyance of apartment to buyer.]*
21. Financing Statement recorded on August 9, 2004, made by Gentry Investment Properties and Gentry Homes, Ltd., as Debtor and Bank of Hawaii, as Agent, as Secured Party, recorded as Document No. 2004-162054. *[Developer intends to record a document to release this encumbrance prior to conveyance of apartment to buyer.]*
22. Declaration of Intent to Merger; Consent dated August 16, 2005, recorded in said Office of the Assistant Registrar as Document Nos. 3314878 and 3314879;
23. Easement 8786, for drainage purposes, as shown on Map 1285, as set forth by Land Court Order No. 164962, recorded on February 13, 2006;
24. Easement 8789, for drainage purposes, as shown on Map 1285, as set forth by Land Court Order No. 164962, recorded on February 13, 2006; *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
25. Easement 8794, for utility purposes, as shown on Map 1285, as set forth by Land Court Order No. 164962, recorded on February 13, 2006; *(This encumbrance will be deleted upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
26. Easement 8795, for temporary turnaround purposes, as shown on Map 1285, as set forth by Land Court Order No. 164962, recorded on February 13, 2006; *(This encumbrance will be deleted upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
27. Restriction of Vehicular Access Rights as shown on Map 1285 of said Land Court Application 1069, as set forth by Land Court Order No. 164962, recorded on February 13, 2006; *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
28. Easement 8824, for temporary turnaround & utility purposes, as shown on Map 1289, as set forth by Land Court Order No. 165680, recorded on April 7, 2006. *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*

29. Easement 8825, for power supply purposes, as shown on Map 1289, as set forth by Land Court Order No. 165680, recorded on April 7, 2006. *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
30. Easement 8826, for switching vault purposes, as shown on Map 1289, as set forth by Land Court Order No. 165680, recorded on April 7, 2006. *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
31. Easement 8827, for electrical purposes, as shown on Map 1289, as set forth by Land Court Order No. 165680, recorded on April 7, 2006. *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
32. Restriction of Vehicular Access Rights as shown on Map 1289 of said Land Court Application 1069, as set forth by Land Court Order No. 165680, recorded April 7, 2006; *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
33. The designation of the following easements as shown on said Map 1292, as set forth by Land Court Order No. 166158, recorded on May 17, 2006:
  - a. Easement 8862, for temporary turnaround and utility purposes; and
  - b. Easement 8866, for electrical purposes.*(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
34. Easement 8, for electrical and irrigation purposes, as shown on DPP File No. 2005/Sub-110 *(the Montecito/Tuscany III Bulk subdivision map).*
35. Easement 1, for access and utility purposes, as shown on DPP File No. 2005/Sub-180 *(the Montecito/Tuscany III Phase subdivision map).*
36. Easement 2, for access and utility purposes, as shown on DPP File No. 2005/Sub-180 *(the Montecito/Tuscany III Phase subdivision map).*
37. Easement 3, for access and utility purposes, as shown on DPP File No. 2005/Sub-180 *(the Montecito/Tuscany III Phase subdivision map).*
38. Easement 4, for access and utility purposes, as shown on DPP File No. 2005/Sub-180 *(the Montecito/Tuscany III Phase subdivision map).*
39. Easement 5, for access and utility purposes, as shown on DPP File No. 2005/Sub-180 *(the Montecito/Tuscany III Phase subdivision map).*
40. Easement 6, for access and utility purposes, as shown on DPP File No. 2005/Sub-180 *(the Montecito/Tuscany III Phase subdivision map).*
41. Easement 7, for access and utility purposes, as shown on DPP File No. 2005/Sub-180 *(the Montecito/Tuscany III Phase subdivision map).*

42. Easement 8, for irrigation purposes, as shown on DPP File No. 2005/Sub-180 (*the Montecito/Tuscany III Phase subdivision map*).
43. Easement 9, for irrigation purposes, as shown on DPP File No. 2005/Sub-180 (*the Montecito/Tuscany III Phase subdivision map*).
44. Agreement for Issuance of Conditional Use Permit Under Section 21-5.380 of the Land Use Ordinance (LUO) dated \_\_\_\_\_ and recorded in said Office of the Assistant Registrar as Document No. \_\_\_\_\_. *Developer will record this document once the Land Court version of DPP File No. 2005/Sub-180 has recorded and Gentry Homes, Ltd. has acquired the fee interest in the above referenced lots. This document allows the seven phase lots and the three landscape lots to be regarded as one big lot for the purpose of determining building set back requirements. It is also referred to as a "joint development" agreement.*
45. The covenants, agreements, obligations, conditions, easements and other provisions as contained in the Declaration of Condominium Property Regime of MONTECITO/TUSCANY III dated \_\_\_\_\_ recorded in said Office of the Assistant Registrar as Document No. \_\_\_\_\_ and Condominium Map No. \_\_\_\_\_, to which reference is hereby made. Said Declaration and Condominium Map were amended by that certain First Amendment to Declaration recorded in said Office of the Assistant Registrar as Document No. \_\_\_\_\_.
46. By-Laws of the Association of Apartment Owners of MONTECITO/TUSCANY III dated \_\_\_\_\_ and recorded in said Office of the Assistant Registrar as \_\_\_\_\_.
47. Real property taxes due and payable, refer to Director of Finance, City and County of Honolulu.

**EXHIBIT "F"**

**THE DEVELOPER'S RESERVED RIGHTS TO CHANGE THE CONDOMINIUM DOCUMENTS**

**DEVELOPER'S RESERVED RIGHTS.** The Developer's Reserved Rights outlined in this Exhibit "F" are necessary and/or helpful to developing the Project in phases. The Developer may exercise the Developer's Reserved Rights stated in the Declaration separately or in one or more combinations and at one or more times, at the Developer's sole discretion. The Developer has no duty or obligation to exercise the Developer's Reserved Rights. The Developer may exercise the Developer's Reserved Rights until the earlier of (i) December 31, 2010 or (ii) the date when the Developer records a document giving up all of the Developer's Reserved Rights (the "Development Period").

The Developer may exercise any of the Developer's Reserved Rights stated in this Exhibit "F" and in Section 9.6 and Sections 17 through 17E, inclusive of the Declaration without being required to obtain the approval, consent, or joinder of anyone else and without the knowledge of anyone else. This includes but is not limited to the Association of Apartment Owners, any lender, or any other Apartment Owner or other person acquiring an interest in the Project. When a person or entity acquires an interest in an Apartment or any other interest in the Project, said person or entity automatically:

**A.** Takes said person's or entity's interest subject to the Developer's Reserved Rights and each and every exercise and/or assignment of them;

**B.** Acknowledges, approves, consents to, agrees to and accepts (i) the Developer's Reserved Rights and the exercise of them from time to time; (ii) that such exercise may change the Project; (iii) that such exercise may result in the recalculation of the common interest of some or all Apartments in some cases; (iv) that the Developer can file and/or record any and all documents that the Developer deems necessary or convenient to the exercise of its rights, including but not limited to any amendment to the condominium documents.

**C.** Agrees, promptly after being asked to do so, to join in, consent to, sign, have notarized, deliver and record all documents and do all other things that the Developer in its sole discretion determines to be necessary or convenient to the exercise of the Developer's Reserved Rights or to accomplish the purpose for which those rights were reserved (as determined by the Developer).

**D.** Appoints the Developer as said person's or entity's attorney-in-fact with full power of substitution to execute such documents and do such other things on said person's or entity's behalf, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of any such party. The Developer cannot use its power of attorney under this Exhibit "A" to waive or release any right an Owner or other interested person might have under the Act, to cancel the purchase of an Apartment, or to mortgage an Owner's Apartment.

**1. DEVELOPER'S RIGHT TO GRANT/REALIGN EASEMENTS.** The Developer reserves the right for itself and its successors and assigns, to and until the later of (i) the end of the Development Period or (ii) the date of sale of the last apartment unit in the Merged Area, to designate, delete, relocate, realign, reserve and grant easements and rights of way over, under and on the common elements of MONTECITO/TUSCANY III, provided that such elements and/or rights of way shall not be located on or within any existing structure on the Land and shall not unreasonably disturb, impair or interfere with the normal use and enjoyment of the land by the apartment owners.

**2. DEVELOPER'S RESERVED RIGHT TO CREATE NEW APARTMENTS.** Any other provision in the Declaration or the By-Laws notwithstanding, the Developer shall have the right (but

not the obligation) at its sole discretion under Section 17A of the Declaration, to create one or more New Apartments in the Project and to create and designate common elements and limited common elements appurtenant to any New Apartment. The Developer may do this more than once and at any time prior to the expiration of the Development Period.

**2.1 Limits on Developer's Reserved Rights to Create New Apartments.** The Developer's Reserved Rights in said Section 17A are subject to the following terms and conditions:

**A.** Developer may only create New Apartments in the Undeveloped Land Area (as defined in Section 1(z) of the Declaration) and/or in the Merged Area (as defined in Section 1(r) of the Declaration).

**B.** The total number of Apartments in the Project may not exceed the limits contained in the zoning code applicable to the Land.

**C.** The Developer must pay all costs of creating the New Apartments and designating or converting the use of common elements or limited common elements.

**2.2 Extent of Developer's Reserved Right to Create New Apartments.** Subject to the above limitation, the Developer's Reserved Right to create New Apartments include the right to do anything necessary or convenient to create the New Apartments or to designate or convert the use of common elements or limited common elements, including but not limited to the right to do the following:

**A.** to execute and record one or more amendments to this Declaration and Condominium Map, that describes the New Apartments. The amendment shall include a certificate signed by a registered architect or professional engineer as specified in Section 514B-34 of the Act;

**B.** to allocate a portion of the common interest currently assigned to the Reserved Unit to the New Apartments by executing and recording an amendment to this Declaration;

**C.** to designate or convert the use of common elements or limited common elements to New Apartments by recording an amendment to this Declaration;

**D.** to amend any previously recorded deed or other document conveying or encumbering an Apartment so that it conforms with the revised Declaration and/or to record a new deed or conveyance document for that purpose. For example, if the Developer creates New Apartments, it may need to adjust the common interest of each existing Apartment. If so, the Office of the Assistant Registrar of the Land Court of the State of Hawaii may require the Developer to change the deeds for existing Apartments to reflect the such change in common interest or it may require that the Developer issue replacement deeds reflecting such change in common interest.

**2.3 Impact of Exercise of Developer's Reserved Right to Create New Apartments.** Upon the recordation of an amendment to this Declaration and the Condominium Map as outlined above, the following will take place:

**A.** The New Apartments will become condominium Apartments and will be part of the Project for all intents and purposes. The limited common elements will be appurtenant to the New Apartments to which they are assigned. The owner of a New Apartment may deed it, lease it or otherwise encumber it just the same as if the New Apartment had been created from the beginning of the Project.

**B.** The Developer will be the owner of each New Apartment and its common interest until the Developer conveys it to someone else. Nobody else except the Developer will have any legal or equitable rights in or to the New Apartments and its common elements.

**C.** The Owners of all Apartments (including the New Apartments) will have the right to use the common elements of the Project to the same extent and subject to the same limits, just as if the Project had been developed with the New Apartments from the beginning.

**3. DEVELOPER'S RESERVED RIGHT TO CONSTRUCT NEW IMPROVEMENTS.** Any other provision in the Declaration or the By-Laws notwithstanding, the Developer shall have the right (but not the obligation) at its sole discretion under Section 17B of the Declaration, at any time to design, designate, develop, build, add to and complete new improvements ("New Improvements") on the Land. The Developer may do this more than once and at any time prior to the expiration of the Development Period.

**3.1 Limits on Developer's Reserved Rights to Construct New Improvements.** The Developer's reserved rights in said Section 17B are subject to the following terms and conditions:

**A.** A licensed architect or engineer must prepare plans and specifications for the New Improvements. The Developer must obtain all necessary governmental approvals and permits for the New Improvements. The Developer must build the New Improvements substantially in accordance with the plans and specifications.

**B.** The plans and specifications for the New Improvements shall not require any material change to or the demolition of any existing Apartment or limited common element, except if that Apartment and limited common element is owned by the Developer. The Developer has a right to connect to, use, relocate and/or realign improvements to the Project to provide electricity, hot and cold water, air conditioning and other utilities and services, and when applicable, to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the common elements of the Project as necessary and desirable. The Developer must do this in a way that does not cause any permanent interruption in the service of utilities to any other part of the Project.

**C.** The Developer must pay all costs and expenses for the design, development and construction of the New Improvements. The Developer makes no promise as to when construction of any new phase will commence or be completed. Until construction of any new phase is substantially completed, the cost associated with any New Apartments, common elements and limited common elements shall be the sole responsibility of the Developer. Developer shall be solely responsible for all costs and expenses to reasonably maintain, repair, upkeep and provide security for the Undeveloped Land Area. For safety and other reasons, the Developer intends to fence off, screen or otherwise secure the Undeveloped Land Area and to severely limit and restrict access to such Undeveloped Land Area by all other Apartment Owners and any other person. Each Apartment Owner and every other interested person: (i) agrees to stay out of the Undeveloped Land Area and any specifically fenced areas until access to such area is specifically authorized by the Developer, and to see that the Apartment Owner's representatives, licensees and invitees also do so; (ii) acknowledges and agrees that the ongoing construction will result in noise, dust and increased traffic in and around the Project for a period of time; (iii) acknowledges and agrees that care must be taken around construction sites, as certain hazardous conditions relating to the construction may exist for a period of time.; (iv) acknowledges and agrees that Developer will make efforts to minimize dust but that dust and debris is an inevitable result of the ongoing construction; (v) waives any rights, claims or actions which the Apartment Owner might otherwise have against the Developer as a result of any damage to Apartment

Owners' real or personal property, any inconvenience, annoyance or nuisance cause by any such ongoing activities.

**D.** The Developer shall arrange and pay for builder's risk insurance and general liability insurance. The insurance must stay in effect during the entire construction period. Developer must provide the Managing Agent proof of insurance via a certificate of insurance showing the Association as the certificate holder.

**E.** The Developer shall amend this Declaration and the Condominium Map to designate and show any New Improvements. Upon the recordation of such an amendment the New Improvements will be part of the condominium project as though they had been built at the beginning.

### **3.2 Extent of Developer's Reserved Rights to Construct New Improvements.**

Subject to the above limitations, the Developer shall have the absolute right to do the following :

**A.** To have the exclusive right to control, manage, and conduct the design, development, construction, addition and completion of the New Improvements on the Land even after Developer deeds Apartments to others.

**B.** To remove, change or add common elements or to convert the use of common elements to another purpose.

**C.** To connect the New Improvements to utilities of the Project; and

**D.** To build a fence around the construction area and to have the exclusive use and control of the area enclosed by the fence, and to make all Apartment Owners, their representatives, licensees and invitees stay out of that area until the construction is finished.

**E.** To obtain all permits, licenses, and approvals necessary or convenient to the development, construction, completion and/or operation and use of the Project;

**F.** To coordinate the work and activities of the contractors, subcontractors, architects, engineers, laborers, suppliers, and others to complete the Project in accordance with the Developer's objectives on time, costs and quality;

**G.** To exercise all rights and make all decisions of the "Owner" or the "developer" or similar contracting party (including but not limited to all rights and decisions with respect to litigation and arbitration of claims arising thereunder or in connection therewith, and the compromise thereof) with respect to all contracts now or later signed in connection with the development and construction of the Project.

**H.** To review and approve necessary or desirable changes and requests for changes and change orders with respect to the Project;

**I.** To publish and file the notice of completion in accordance with Section 507-43 of the Hawaii Revised Statutes, as amended;

**J.** To approve and direct the replacement of any New Improvements that are under construction and that are damaged by fire or something else. This includes the right to settle any insurance claims made under any insurance policy that the Developer buys or arranges.

K. To amend the Declaration and Condominium Map as necessary or convenient to show the New Improvements.

L. To amend any previously recorded deed or other document conveying or encumbering an Apartment so that it conforms with the revised Declaration and/or to record a new deed or conveyance document for that purpose.

**3.3 Restricted Access to Construction Site.** During the construction period, each Apartment Owner must: (a) remain outside of any fenced construction area; (b) not directly or indirectly do or attempt to do anything that would or could affect or interfere with the development, construction and completion of the New Improvements.

**4. DEVELOPER'S RESERVED RIGHT TO ADD LAND AND/OR EFFECT MERGER.** Any other provision in this Declaration notwithstanding, the Developer shall have the right (but not the obligation) at its sole discretion under Section 17C of the Declaration, at any time to add real property to the Project by amending this Declaration, By-Laws, Condominium Map and any other documents that the Developer deems necessary or convenient to effect such addition of real property to the Project. Specifically, the Developer may (but is not obligated to) add the Original Property and the Additional Land as set forth in the Declaration of Intent to Merge. Should Developer add the Original Property and the Additional Land to the Project, the common interest for the Apartments developed in the Merged Area shall be as described in Exhibit "C". If Developer, in its sole discretion, does not subject the Original Property and the Additional Land to this Declaration, then Developer reserves the right to effect either a legal merger or an administrative merger of all or a portion of the Additional Land and the Original Property with the Project pursuant to the terms of the Declaration of Intent to Merge. The new ownership interest (if done pursuant to a legal merger) or the new maintenance fee/voting allocation (if done pursuant to an administrative merger) shall be as described in Exhibit "C".

**5. DEVELOPER'S RESERVED RIGHT TO WITHDRAW LAND.** Any other provision in the Declaration notwithstanding, the Developer shall have the right (but not the obligation) at its sole discretion under Section 17D of the Declaration, at any time to withdraw real property from the Project by amending this Declaration, By-Laws and Condominium Map. Upon such withdrawal as set forth in said Section and with no further action required, no Apartment Owner, mortgagee, lien holder, Apartment purchaser and any other person who may have an interest in the Project or any Apartment (other than the Developer and the holder of any blanket mortgage covering the Land prior to this Declaration) shall have any legal or equitable interest in the withdrawn land. It is the intent of this provision that upon such withdrawal, legal title to the withdrawn land will be vested solely in the Developer. If deemed necessary to effect the intent of this Section, each Apartment Owner, mortgagee, lien holder and any other person who may have an interest in the Project or any Apartment shall, if requested by the Developer, unconditionally quitclaim and/or release its interest, if any, in the withdrawn land to the Developer. **Specifically, Developer intends to (but is not limited to) withdraw the land area shown on the Condominium Map as Land to be Withdrawn.**

In exercising the foregoing right, the Developer may at any time (i) execute, file and process to final approval an application with the City and County of Honolulu for the legal subdivision of the withdrawn land from the Land covered by this Declaration; (ii) execute and record a petition and any supporting documentation for such subdivision in the Land Court of the State of Hawaii; (iii) execute and record any amendments to this Declaration, the Condominium Map and the By-Laws to note the withdrawal of real property from the Land; and (iv) execute, apply for and obtain from the Real Estate Commission of the State of Hawaii a public report or amendment to public report noting the withdrawal of land from the Project. The withdrawn land shall be deemed deleted from the Project for all purposes

upon the recordation in the Bureau of Conveyances of an amendment to this Declaration and the Condominium Map that sets forth the withdrawal of real property.

**6. DEVELOPER'S RESERVED RIGHT TO SUBDIVIDE AND/OR CONSOLIDATE LAND.** Any other provision in the Declaration notwithstanding, the Developer shall have the right (but not the obligation) at its sole discretion under this Section, at any time to subdivide the Land and/or consolidate the Land with other real property in order to effect the addition or withdrawal of land as described in Sections 17C and 17D of the Declaration by amending this Declaration, By-Laws, Condominium Map and any other document that the Developer deems necessary or convenient to effect such subdivision or consolidation.

EXHIBIT "G"

ESTIMATED BUDGET AND INTITAL MAINTENANCE FEE SCHEDULE

08-11-06

Montecito/Tuscany  
Estimated Budget and Inital Maintenance Fee Schedule for  
(356 units)

	Monthly	Annually
<b>Administration</b>		
Tax Preparation/Audit	\$100	\$1,200
Legal Fees	\$300	\$3,600
Property Management/Accounting	\$2,583	\$30,996
Design Review	\$1,000	\$12,000
Mgmt. Office Expenses	\$1,800	\$21,600
AOAO Office Expenses	\$200	\$2,400
Vehicle Expenses	\$50	\$600
Miscellaneous Expenses(1)	\$125	\$1,500
<b>Payroll &amp; Benefits</b>		
Site Manager - Full Time	\$3,200	\$38,400
Assistant Site Manager - Full Time	\$2,400	\$28,800
Maintenance	\$3,100	\$37,200
Payroll Taxes	\$400	\$4,800
Workers Compensation	\$300	\$3,600
TDI	\$35	\$420
Health Care	\$912	\$10,944
Payroll Preparation	\$125	\$1,500
<b>Maintenance, Repair, Supplies</b>		
Grounds/Yards & Common	\$11,000	\$132,000
Landscape/Irrigation Extras	\$450	\$5,400
Contract Pool & Supplies	\$600	\$7,200
Cleaning Supplies - Rec Ctr	\$150	\$1,800
Pest Control - Rec Center	\$200	\$2,400
Miscellaneous Repairs & Purchases(2)	\$500	\$6,000
<b>Utilities</b>		
Electricity	\$2,000	\$24,000
Water - Potable (3)	\$5,000	\$60,000
Sewer	\$11,000	\$132,000
Irrigation Non-Potable Water (4)	\$300	\$3,600
Telephone	\$300	\$3,600
Propane Fuel	\$40	\$480

**Montecito/Tuscany**  
**Estimated Budget and Initial Maintenance Fee Schedule for**  
**(356 units)**

08-11-06

	Monthly	Annually
<b>Insurance</b>		
Master Policy	\$18,000	\$216,000
Recreation Center Policy	\$300	\$3,600
<b>Taxes &amp; Government Assessments</b>		
GET	\$45	\$540
<b>Reserves</b>	\$7,200	\$86,400
<b>TOTAL DISBURSEMENTS</b>	<b>\$73,715</b>	<b>\$884,580</b>
<b>Monthly Maintenance Fee Amount</b>	<b>\$207.06</b>	<b>Per Unit</b>
(1) Recording secretary, tally clerk, meeting overtime charges (2) Misc. fence & electric repairs (3) Potable water only. Used in homes and does not include irrigation (4) Non-Potable water used for common area irrigation		

I, Phyllis Okada Kacher, as agent for/and/or employed by Hawaiiana Management Company, Ltd. the condominium managing agent/developer for the Montecito/Tuscany (Area 33 and 39), hereby certify that the above initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

  
 \_\_\_\_\_  
 Signature

8-11-06  
 \_\_\_\_\_  
 Date

Pursuant to 514B-148,7b, Hawaii Revised Statutes, a new association need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. The Developer has not conducted a reserve study for the project. The budget amount for Reserves is an estimate only.

Note: The foregoing maintenance fees do not include the dues payable to the Ewa By Gentry Community Association. At the present time those dues are \$75 per quarter for a total of \$300 per year.

EXHIBIT "G-1"

FORM OF RECREATION CENTER LICENSE

*Developer intends to execute a Non-Exclusive License Agreement for the Recreation Center in favor of the Association of Apartment Owners of Montecito/Tuscany III substantially in the form attached below.*

LICENSE

START HERE

Effective \_\_\_\_\_ GENTRY HOMES, LTD., a Hawaii corporation ("Gentry") hereby grants a license to the ASSOCIATION OF APARTMENT OWNERS OF MONTECITO/TUSCANY III (the "Association") to use the facilities as described below, subject to the terms and conditions set forth in this License. The Association is an unincorporated association with its address c/o Hawaiiana Management Company, 711 Kapiolani Boulevard, Suite 700, Honolulu, Hawaii 96813.

**A. Facilities.** Gentry is the developer of the Montecito/Tuscany III condominium project, located in Ewa by Gentry, Hawaii. Montecito/Tuscany III is located in the "Merged Area" as defined in that certain Declaration of Intent to Merge recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3314878. Under Gentry's current plans, there will be developed in the Merged Area, the Montecito/Tuscany condominium project (already in existence), the Montecito/Tuscany II condominium project (already in existence) and the Montecito/Tuscany III condominium project (collectively, the "Condominium Projects"). Gentry has completed a recreational facility on Lot 16021, Map 1252, Ld.Ct. App. 1069 (the "Premises"), which will serve all of the residents of the Merged Area. Section 18.3(b) of the Montecito/Tuscany III Declaration provides in part as follows:

"If the Developer completes the development of the Recreation Center prior to the completion of all of the condominium projects within the Merged Area, the Developer may grant to the respective associations of the then-completed condominium projects a license to use the Recreation Center, provided that the association(s) will bear the costs of maintaining and operating the facilities of the Recreation Center. Any such license shall automatically expire upon the conveyance of the fee interest in the Recreation Center to the respective associations in the Merged Area."

Gentry has not yet completed all condominium projects within the Merged Area, and therefore desires to grant a non-exclusive license to the Association at this time, in order to allow the residents of the Association the right to use the Premises. A non-exclusive license to use the Premises has already been granted to the Associations of Apartment Owners of Montecito/Tuscany and Montecito/Tuscany II.

**B. Grant of License; Purpose.** Gentry hereby grants to the Association a non-exclusive license to enter and use the Premises, for the purposes and on the terms and

conditions set forth below (“License”). By purchasing a unit in the Montecito/Tuscany III condominium project, the members of the Association automatically agree to the terms and conditions set forth in this License. The Premises shall be used for recreational purposes only and shall be made available to all members of the Association and all owners, tenants and occupants of the Condominium Projects. Gentry hereby establishes the initial rules and regulations concerning the use of the Premises which are attached to this License. As of \_\_\_\_\_, the Montecito/Tuscany Association shall have the right to impose reasonable rules and regulations concerning the use of the Premises which shall apply to all users. However, said rules and regulations will be subject to Gentry’s review and approval until the Premises have been conveyed in fee to the several associations of apartment owners of the Condominium Projects.

C. **Term.** The term of this License shall commence as of the Effective Date and shall automatically end as of the date that the fee interest in the Premises is conveyed to the several associations of the Condominium Projects as tenants in common.

D. **Condition of the Premises.** The Premises are being made available for use by the Association in their “AS IS” condition. Except as set forth in Section E below, Gentry shall not be required to make any repairs or construct any additional improvements to the Premises.

E. **Responsibility to Operate and Maintain.** The merged associations of Montecito/Tuscany and Montecito/Tuscany II have been responsible for the maintenance, operation and repair of the entire Premises as of February 1, 2006. As of \_\_\_\_\_ the Association of Apartment Owners of Montecito/Tuscany, Montecito/Tuscany II and Montecito/Tuscany III will be administratively merged (the “Merged Association”) and will assume the responsibility for the maintenance, operation and repair of the entire Premises. Gentry shall have the right to periodically inspect the Premises, and if Gentry reasonably believes that they are not being adequately maintained, then Gentry may give notice of such deficiency to the Merged Association (or its managing agent), and the Merged Association shall take prompt action to remedy the problem. During the terms of this License, the Merged Association shall not make any alterations, additions or improvements to the Premises without the prior written consent of Gentry.

F. **Costs and Expenses.** The Association shall not be required to pay Gentry a license fee for the use of the Premises. As of \_\_\_\_\_, the Merged Association shall be responsible for all costs and expenses associated with the operation, maintenance and repair of the Premises, including without limitation the following: real property taxes and assessments and insurance allocable to the Premises, utilities (electricity, gas, water, sewer and trash removal), landscaping, and maintenance.

G. **Hazardous Materials.** The Association will not use, produce, store, dispose of or allow to exist on, under or about the Premises, any Hazardous Materials, except in full compliance with all applicable laws, rules and regulations. The Association will indemnify, defend and hold Gentry, and its agents and representatives harmless from and against all losses, claims, damages (including foreseeable or unforeseeable consequential damages) and liabilities which may arise out of or may be directly or indirectly attributable to the Association's use, production, storage, or disposal of any Hazardous Materials on, under or about the Premises. The term "Hazardous Materials" means any and all compounds, substances, elements, and materials which have been determined by any governmental authority to be capable of posing a risk or injury to health, safety or property. If the presence of Hazardous Materials on the Premises caused or permitted by the Association results in the contamination of the Premises, the Association shall at its expense take all action necessary to immediately return the Premises to the condition existing prior to the appearance of the Hazardous Materials.

H. **Indemnification; Insurance.** The Association assumes all risk of bodily injury or death and all negligence, loss or damage to all personal property owned, placed or stored on the Premises and/or relating to the use of the Premises and agrees that Gentry shall not be responsible for such loss or damage. The Association agrees to indemnify and hold Gentry, and its agents, representatives and employees, harmless from and against all losses, claims, damages, or liability arising out of the use or occupancy of the Premises or arising out of the Association's failure to comply with the terms of this License. The Association shall, during the entire term of the License, keep in full force and effect (i) a policy of commercial general liability insurance covering the Premises in the minimum limits of \$1,000,000 per occurrence, \$2,000,000 annual aggregate, and (ii) property insurance covering all improvements on the Premises, including outdoor properties and also including Tenant's personal property in or upon the Premises, in an

amount equal to one hundred percent of full replacement cost at the time of loss, which policies shall each name Gentry as an additional insured. The Association shall deliver to Gentry a copy of the policies or certificate thereof, within five (5) days after request from Gentry. Any such policy shall provide that it may not be canceled or altered without thirty (30) days' prior written notice to Gentry.

**I. No Assignment.** The Association may not assign, sublet or otherwise transfer this License or its interest in the Premises or any portion thereof without the prior written consent of Gentry.

**J. General.** This License shall be governed and construed in accordance with the laws of the State of Hawaii. This License contains the entire terms and conditions regarding the use of the Premises and it may not be amended unless otherwise agreed to in writing by both Gentry and the Association. The invalidity or unenforceability of any provision of this License shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect. This License shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors and permitted assigns. Any dispute between the parties arising out of this License shall be subject to the mediation and arbitration provisions set forth in the sales contracts of individual units sold to buyers in the Merged Area.

By signing below this \_\_\_\_\_, Gentry, acting upon its own behalf and as the initial Association of Apartment Owners of Montecito/Tuscany III, agrees with all matters set forth in this License.

GENTRY HOMES, LTD.,  
a Hawaii corporation

By \_\_\_\_\_  
Robert W. Brant  
Its President

**MONTECITO/TUSCANY III  
COMMUNITY CENTER RULES**

1. **NO LIFEGUARD ON DUTY.** *Use of all Community Center facilities is at your own risk.*
2. **Use of the POOLSIDE SHOWER IS REQUIRED FOR ALL SWIMMERS BEFORE ENTERING THE POOL. USE WATERPROOF SUNSCREEN ONLY – oils and excess product will damage our pool pump.**
3. **SWIM DIAPERS ONLY** *must be worn by those in diapers to prevent contamination of the pool.*
4. *All swimmers must wear appropriate swim attire. NO STREET CLOTHES allowed in the pool.*
5. **NO DIVING, RUNNING, JUMPING, HORSEPLAY, OR EXCESSIVE NOISE** *allowed at the Community Center.*
6. **NO SPOUTING OF WATER OR DISCHARGING OF BODILY FLUIDS** *allowed in the pool. PLEASE USE THE TOILETS IN OUR RESTROOMS.*
7. **NO PERSONAL FLOTATION DEVICES** *may be used in the pool.*
8. **EARPHONES MUST BE USED** *with audio players and all other electronic devices.*
9. **CHILDREN UNDER THE AGE OF 18 MUST BE ACCOMPANIED AT ALL TIMES** *by an adult owner, resident, sponsored houseguest or representative of the Montecito/Tuscany Community Association.*
10. **GUEST MUST BE ACCOMPANIED AT ALL TIMES** *by a resident of the Montecito/Tuscany Community. There is a maximum of 4 guests per household without a prior reservation.*
11. **NO LOITERING, SOLICITING, GAMBLING OR ALCOHOL** *without prior written approval from management.*
12. **NO ANIMALS PERMITTED** *except for certified guide or signal dogs.*
13. **RETURN ALL POOL FURNITURE** *to its original location after use.*
14. **FOOD AND BEVERAGES ARE PERMITTED** *in approved containers and areas. NO GLASS CONTAINERS. NO FOOD OR DRINKING IN THE POOL. PLEASE CLEAN UP AND DISPOSE OF ALL RUBBISH.*
15. **PAVILIONS MAY BE RESERVED** *(but not the pool deck or lounge chairs). Please see management for reservations.*

16. **POOL MAY BE CLOSED WITHOUT PRIOR NOTICE** *due to inclement weather, hazardous discharge or at the discretion of the general manager or his/her appointed representative.*
17. **KEEP VALUABLES AT HOME.** *The Association, Board of Directors and Staff are not responsible for any loss, damage or theft of personal items.*
18. **BE CONSIDERATE OF OTHERS.** *Disorderly persons will be removed from the premises immediately. The Association, Board of Directors and Staff are authorized to enforce all Community Center Rules and Regulations.*

**EXHIBIT "H"**

**SUMMARY OF SALES CONTRACT**

The Sales Contract contains the price and other terms and conditions under which a buyer will agree to buy an apartment in the Project. Among other things, the Sales Contract states the following:

1. Buyer must live in the apartment for at least 365 consecutive days.
2. Buyer has certain obligations if Buyer wants a mortgage loan to cover part of the purchase price.
3. Buyer's money will be held in escrow, under the terms of the Escrow Agreement.
4. Buyer will not receive interest on deposits made under the Sales Contract.
5. The apartment will be subject to various other legal documents which Buyer should examine.
6. The Project will be subject to ongoing construction and sales activities which may result in certain annoyances to Buyer.
7. Seller has no control over certain activities on adjacent property owned by others including agriculture, military, utility and aviation. These activities may cause some inconveniences to Buyer. Buyer will indemnify Seller and the owners of the properties involved except in cases of negligence or willful misconduct.
8. Currently, under this public report, any sales contract signed by Buyer and Seller is not binding and may be cancelled by either Seller or Buyer at any time for whatever reason. Buyer will be entitled to a full refund.
9. Under certain circumstances where the apartment is ready for occupancy and Buyer has not completed his financing arrangements for the purchase of the apartment, Buyer will be responsible for all of Seller's expenses as a result of Buyer's delay.
10. In the event of default prior to closing under the sales contract:
  - By Buyer:
    - a. Seller may cancel the sales contract and retain Buyer's initial deposit;
    - b. Seller may file a lawsuit for damages;
    - c. Seller may file a lawsuit for "specific performance"; and
    - d. Buyer shall be responsible for expenses incurred.
  - By Seller:
    - a. Buyer may file a lawsuit for "specific performance";
    - b. Buyer may cancel the sales contract and Seller will return all deposits, without interest;
    - c. Buyer has all remedies available at law and in equity.

**EXHIBIT "I"**

**SUMMARY OF ESCROW AGREEMENT**

The Escrow Agreement describes the arrangement under which the deposits a buyer makes under a Sales Contract will be held by a neutral party ("Escrow"). The following are relevant terms stated in the agreement:

1. Interest on Buyer's deposits will accrue in favor of the Seller and not the Buyer unless the parties specifically provide otherwise.
2. Escrow will arrange for Buyer to sign all necessary documents.
3. The Escrow Agreement describes the conditions upon which a refund will be made to a buyer.
4. The Escrow Agreement describes what will happen to a buyer's funds if a party defaults under the Sales Contract.
5. The Escrow Agreement contains various other provisions and establishes certain charges with which the Buyer should become acquainted.

**END OF EXHIBIT "I"**

**EXHIBIT "J"**

**CONSTRUCTION WARRANTIES**

**Building and Other Improvements:** The apartment and related common elements will be covered by a Limited Warranty. The Limited Warranty will be for a ten (10) year period which will commence on the recording date of the deed to the Buyer. The coverage amount will be the base sales price of the apartment. The Limited Warranty will be substantially similar to the sample Limited Warranty attached as Exhibit "J-1" to this public report. The Developer reserves the right to make changes to the Limited Warranty without further notification to Buyer. The Developer's obligations under the Limited Warranty are expressly conditioned on prompt notification by Buyer or the Association to the Developer of any defects in the Apartment. In addition, Developer will not be responsible for damage to the Apartment or common elements arising out of the failure of Buyer or the Association to take reasonable and prudent steps to maintain the property or to prevent damage or further damage to the Property. **ROUTINE MAINTENANCE WORK IS NOT COVERED BY ANY WARRANTY.**

**Appliances:** Warranties on appliances furnished with an apartment are not provided by the Developer. the execution and delivery of the apartment deed will operate as an assignment from the Developer to the Buyer of the respective manufacturer's or dealers' warranties, if any.

EXHIBIT "J-1"

# HOME BUILDER'S LIMITED WARRANTY

Administered by Professional Warranty Service Corporation

Throughout this HOME BUILDER'S LIMITED WARRANTY, referred to hereinafter as the "LIMITED WARRANTY", the words "YOU" and "YOUR" refer to the HOMEOWNER and HOMEOWNERS ASSOCIATION. The words "WE", "US" and "OUR" refer to the BUILDER. The other words and phrases which appear in boldface uppercase type also have special meaning. Refer to the Section X. Definitions, so that YOU will understand the terminology applicable to this LIMITED WARRANTY.

This LIMITED WARRANTY establishes an agreed method for determining when a CONSTRUCTION DEFECT exists and a clear understanding of OUR responsibilities for remedying any such CONSTRUCTION DEFECT. This LIMITED WARRANTY also helps distinguish a CONSTRUCTION DEFECT that is OUR responsibility from those minor imperfections that can reasonably be expected in a HOME or the COMMON ELEMENTS or result from normal wear and tear or are routine HOMEOWNER or HOMEOWNERS ASSOCIATION maintenance responsibilities.

This LIMITED WARRANTY contains the procedures YOU must use to notify US of a condition in YOUR HOME or the COMMON ELEMENTS which YOU believe may constitute a CONSTRUCTION DEFECT. In the event a condition occurs in the HOME or the COMMON ELEMENTS that YOU believe may constitute a CONSTRUCTION DEFECT, YOU agree to submit any request for warranty performance under this LIMITED WARRANTY. Based on the information YOU provide, and where WE deem it necessary information obtained from OUR onsite investigation, inspection and/or testing of the HOME or the COMMON ELEMENTS, WE will determine whether WE agree with YOU that the condition constitutes a CONSTRUCTION DEFECT. If WE determine that the condition reported by YOU is a CONSTRUCTION DEFECT, WE will remedy the condition in accordance with the remedies prescribed in this LIMITED WARRANTY. WE will make this determination in accordance with Section III, OUR Coverage Obligations, contained in this LIMITED WARRANTY.

If WE determine that a condition does not constitute a CONSTRUCTION DEFECT that is OUR responsibility and therefore deny YOUR request for warranty performance, YOU have the right to initiate binding arbitration that will irrevocably determine whether the condition constitutes a CONSTRUCTION DEFECT that is OUR responsibility. If this binding arbitration determines that the condition does constitute a CONSTRUCTION DEFECT that is OUR responsibility, WE will resolve the problem in accordance with the remedies prescribed in this LIMITED WARRANTY. The arbitrator will make a determination based on the language contained in Section III, OUR Coverage Obligations.

Enclosed with this LIMITED WARRANTY is a Limited Warranty Validation Form. The Limited Warranty Validation Form provides the dates on which the warranty coverage period begins and expires. It is important that this form is retained with the LIMITED WARRANTY. Liability under this LIMITED WARRANTY is limited to the amount shown on the Limited Warranty Validation Form.

All express or implied warranties other than this LIMITED WARRANTY, including any oral or written statement or representation made by US or any other person, and any implied warranty of habitability, merchantability or fitness, are hereby disclaimed by US and are waived by YOU. In addition, YOU waive the right to seek damages or other legal or equitable remedies from US, OUR subcontractors, agents, vendors, suppliers, design professionals and materialmen, under any other common law or statutory theory of liability, including but not limited to negligence and strict liability. YOUR only remedy in the event of a CONSTRUCTION DEFECT in or to the HOME or the COMMON ELEMENTS or to the real property on which the HOME or the COMMON ELEMENTS is situated is the coverage provided to YOU under this LIMITED WARRANTY. There may be instances where an additional PWC administered Builder's Limited Warranty is issued together with this LIMITED WARRANTY. If both of these warranties are issued to YOU, YOU agree to request warranty performance under either warranty relative to warrantable issues on the HOME or the COMMON ELEMENTS. YOU may not collect twice relative to the same defect and amounts paid or expended by US for warranty performance under either warranty will reduce the limit of liability remaining under both warranties simultaneously.

WE have contracted with PWC for certain administrative services relative to this LIMITED WARRANTY. PWC's sole responsibility is to provide administrative services. Under no circumstances or conditions is PWC responsible for fulfilling OUR obligations under this LIMITED WARRANTY.

If any provision of this LIMITED WARRANTY is determined to be unenforceable, such a determination will not affect the remaining provisions. If this LIMITED WARRANTY or any provision herein is determined to be unenforceable as to a HOMEOWNERS ASSOCIATION or a specific HOMEOWNER, such a determination will not affect the enforceability of this LIMITED WARRANTY or such provision as to any other HOMEOWNERS ASSOCIATION or any other HOMEOWNER. The issue of enforceability, as well as all other issues, will be determined by Binding Arbitration as provided for in this LIMITED WARRANTY.

## I. Coverage Limit

The amount shown on the Limited Warranty Validation Form is OUR limit of liability. It is the most WE will pay or expend for all covered CONSTRUCTION DEFECTS regardless of the number of requests for warranty performance made against this LIMITED WARRANTY. Once OUR limit of liability has been paid, no further requests for warranty performance can be made against this LIMITED WARRANTY or any other PWC administered Builder's Limited Warranty issued for the HOME or the COMMON ELEMENTS.

## II. Warranty Coverage

Coverage under this LIMITED WARRANTY is expressly limited to CONSTRUCTION DEFECTS which occur during the WARRANTY PERIOD indicated on the Limited Warranty Validation Form and are reported by YOU in accordance with the notification requirements of Section VII, Procedure to Request US To Perform Under This LIMITED WARRANTY.

Coverage

During the WARRANTY PERIOD indicated on the Limited Warranty Validation Form that is attached to and made part of this LIMITED WARRANTY, WE warrant the HOME and the COMMON ELEMENTS will be free of CONSTRUCTION DEFECTS. To be eligible for coverage WE must receive written notice from YOU of the alleged CONSTRUCTION DEFECT as soon as it is reasonably possible after YOU have become aware or should have become aware of a CONSTRUCTION DEFECT but in no event later than thirty (30) days after the expiration of the coverage.

## III. OUR Coverage Obligations

All notices of alleged CONSTRUCTION DEFECTS, and complaints under this LIMITED WARRANTY must be made by YOU in writing. Telephonic or face-to-face discussion will not protect YOUR rights under this LIMITED WARRANTY (see Section VII, Procedure to Request US To Perform Under This LIMITED WARRANTY).

In the event YOU allege a CONSTRUCTION DEFECT occurs during the WARRANTY PERIOD, upon receiving written notice from YOU, WE, or a third party designated by US or acting on OUR behalf, will inspect, investigate and/or test (including destructive testing) the alleged CONSTRUCTION DEFECT to determine if a CONSTRUCTION DEFECT exists. Upon confirmation of a CONSTRUCTION DEFECT, WE, or a third party designated by US or acting on OUR behalf, will (1) repair or replace the CONSTRUCTION DEFECT, (2) pay to YOU the actual amount it would cost US to repair or replace the CONSTRUCTION DEFECT or (3) PAY to YOU an amount equal to the diminution in fair market value caused by the CONSTRUCTION DEFECT. The decision to repair, replace, or to make payment to YOU is at OUR or OUR authorized representative's sole option.

WE will have been considered to have breached this LIMITED WARRANTY only if WE fail to resolve a CONSTRUCTION DEFECT in accordance with the terms and conditions of this LIMITED WARRANTY.

A. **Standards By Which the Presence of a CONSTRUCTION DEFECT Will Be Determined**

In the event YOU believe that a flaw in the HOME or the COMMON ELEMENTS constitutes a CONSTRUCTION DEFECT, the following factors will be considered by US in determining whether the condition constitutes a CONSTRUCTION DEFECT. Should either YOU or WE elect to initiate binding arbitration, these factors will be considered by the arbitrator in rendering a decision:

1. Any performance standards or guidelines or other documents or manuals that contain OUR building standards, that were provided to YOU at or prior to closing on the HOME, or in the case of the HOMEOWNERS ASSOCIATION, prior to transferring title to all the COMMON ELEMENTS. Absent such standards, the Residential Construction Performance Guidelines published by the National Association of Home Builders, in effect at the time of closing on the HOME, or in the case of the HOMEOWNERS ASSOCIATION, at the time of transferring title to all the COMMON ELEMENTS shall apply. Absent a specific standard in the documents identified above, building practices and standards in use in the region of the country in which the HOME or the COMMON ELEMENTS are located shall apply;
2. Consideration as to whether the magnitude of the flaw or imperfection:
  - materially affects the structural integrity of the HOME or COMMON ELEMENTS; or
  - has an obvious and material negative impact on the appearance of the HOME or COMMON ELEMENTS; or
  - jeopardizes the life or safety of the occupants; or
  - results in the inability of the HOME or the applicable COMMON ELEMENTS to provide the functions that can reasonably be expected in such a HOME or COMMON ELEMENT
3. Consideration as to whether a condition is the result of normal wear and tear (conditions that are normal wear and tear, or are caused by normal wear and tear are not CONSTRUCTION DEFECTS);
4. Consideration as to whether the condition was caused by, or in any way resulted from, the failure of the HOMEOWNER or HOMEOWNERS ASSOCIATION to perform normal or routine maintenance (any condition that is determined to be a HOMEOWNER or HOMEOWNERS ASSOCIATION maintenance issue, or any condition that results from improper or inadequate HOMEOWNER or HOMEOWNERS ASSOCIATION maintenance, is not a CONSTRUCTION DEFECT);
5. Consideration as to whether the condition was caused by the HOMEOWNER or HOMEOWNERS ASSOCIATION or their representatives, other than US, after the HOMEOWNER took possession of the HOME or the COMMON ELEMENTS (WE and YOU conducted a walk through inspection just prior to closing on the HOME. Damage that was caused by YOU or YOUR representatives is not a CONSTRUCTION DEFECT, for example, a large, visible scratch on marble tile in the entry foyer that was not noted in the walk through inspection, but was reported after furniture was moved into the HOME, will not be considered a CONSTRUCTION DEFECT);
6. Recognition that any condition resulting directly or indirectly from or worsened by changes, additions, alterations or other actions or omissions by the HOMEOWNER or HOMEOWNERS ASSOCIATION or their agents, other than US, will not be considered a CONSTRUCTION DEFECT (this includes changes to the topography, drainage or grade of the property);
7. Any Exclusions contained in this LIMITED WARRANTY.

## IV. Homeowner Maintenance Obligations

Maintenance of the HOME and the COMMON ELEMENTS is YOUR responsibility. All homes and common elements require periodic maintenance to prevent premature deterioration, water intrusion and to ensure adequate performance of the SYSTEMS. WE will make a "Homeowner Maintenance Manual" or similar publication available to YOU upon request. Whether from this document or others that are readily available to YOU, YOU must understand and perform the maintenance that the HOME and COMMON ELEMENTS require. As stated in other sections of this LIMITED WARRANTY, WE are not responsible for HOME or COMMON ELEMENTS maintenance issues or for damage that results from YOUR failure to maintain the HOME or the COMMON ELEMENTS.

## V. Coverage Limitations

When WE or a third party designated by US or acting on OUR behalf, repair or replace a CONSTRUCTION DEFECT the repair or replacement will include the repair or replacement of only those surfaces, finishes and coverings that were damaged by the CONSTRUCTION DEFECT that were part of the HOME or the COMMON ELEMENTS when title was first transferred by US. Surfaces, finishes and coverings that require repair or replacement in order for US or a third party designated by US to repair or replace CONSTRUCTION DEFECTS will be repaired or replaced. The extent of the repair and replacement of these surfaces, finishes or coverings will be to approximately the same condition they were in prior to the CONSTRUCTION DEFECT, but not necessarily to a like new condition.

When repairing or replacing surfaces, finishes and coverings, the repair or replacement will attempt to achieve as close a match with the original surrounding areas as is reasonably possible, but an exact match cannot be guaranteed due to such factors as fading, aging and unavailability of the same materials.

In the case where a CONSTRUCTION DEFECT exists and the HOME is rendered uninhabitable and the CONSTRUCTION DEFECT is repaired or replaced, the repair or replacement shall include the reasonable cost of the HOMEOWNER'S alternative shelter until the HOME is made habitable.

## VI. Exclusions

A. This LIMITED WARRANTY does not cover:

1. Any CONSTRUCTION DEFECTS or other damages resulting, either directly or indirectly, from the following causes or occurring in the following situations:

- a. Fire;
- b. Lightning;
- c. Explosion;
- d. Riot and Civil Commotion;
- e. Smoke;
- f. Hail;
- g. Aircraft;
- h. Falling Objects;
- i. Vehicles;
- j. Floods;
- k. Earthquake;
- l. Landslide or mudslide originating on property other than the site of the HOME or the COMMON ELEMENTS or other property developed by the BUILDER;
- m. Mine subsidence or sinkholes;

- n. Changes in the underground water table not reasonably foreseeable by the **BUILDER**;
  - o. Volcanic eruption; explosion or effusion;
  - p. Wind including:
    - (i). Gale force winds;
    - (ii). Hurricanes;
    - (iii). Tropical storms;
    - (iv). Tornadoes;
  - q. Insects, animals or vermin;
  - r. Changes of the grading of the ground by anyone other than **US** or **OUR** agents, or subcontractors which results in surface drainage towards the **HOME** or other improper drainage or permits water to pond or become trapped in localized areas against the foundation or otherwise;
  - s. Changes, additions, or alterations made to the **HOME** or the **COMMON ELEMENTS** by anyone after the **WARRANTY PERIOD** begins, except those made or authorized by **US**;
  - t. Any defect in material or workmanship supplied by anyone other than **US** or **OUR** agents, or subcontractors;
  - u. Improper maintenance, negligence or improper use of the **HOME** or the **COMMON ELEMENTS** by **YOU** or anyone other than **US** that results in rot, dry rot, moisture, rust, mildew or any other damage;
  - v. Dampness or condensation due to **YOUR** failure to maintain adequate ventilation;
  - w. Damage resulting from the weight and/or performance of any type of waterbed or other furnishings which exceeds the load-bearing design of the **HOME** or the **COMMON ELEMENTS**;
  - x. Normal wear and tear or normal deterioration of materials;
  - y. Economic damages due to the **HOME'S** or the **COMMON ELEMENTS'** failure to meet consumer expectations.
2. Any costs arising from, or any **CONSTRUCTION DEFECT** resulting from the actual, alleged or threatened discharge, dispersal, release or escape of **POLLUTANTS**. **WE** will not cover costs or expenses arising from the uninhabitability of the **HOME** or the **COMMON ELEMENTS** or health risk due to the proximity of **POLLUTANTS**. **WE** will not cover costs or expenses resulting from the direction of any governmental entity to test, clean-up, remove, treat, contain or monitor **POLLUTANTS**;
  3. Any costs arising from, or any **CONSTRUCTION DEFECT** resulting from the effects of electromagnetic fields (EMF's) or radiation;
  4. Any damage to personal property that does not result from a **CONSTRUCTION DEFECT**;
  5. Any "**CONSEQUENTIAL OR INCIDENTAL DAMAGES**";
  6. Any damage to **CONSUMER PRODUCTS**;
  7. Any **CONSTRUCTION DEFECT** as to which **YOU** have not taken timely and reasonable steps to protect and minimize damage after **WE** or **OUR** authorized representative have provided **YOU** with authorization to prevent further damage;
  8. Any damage to the extent it is incurred after or as a result of **YOUR** failure to notify **US** in a reasonably timely manner after **YOU** have become aware or should have become aware of the **CONSTRUCTION DEFECT** or condition causing such damage.
  9. Any costs or obligations paid or incurred by **YOU** in violation of Section VII. C. below;
  10. Any non-conformity with local building codes, regulations or requirements that has not resulted in a **CONSTRUCTION DEFECT**. While **WE** acknowledge **OUR** responsibility to build in accordance with applicable building codes, this **LIMITED WARRANTY** does not cover building code violations in the absence of a **CONSTRUCTION DEFECT**;

11. Any deviation from plans and specifications that has not resulted in a **CONSTRUCTION DEFECT**.
- B. **OUR LIMITED WARRANTY** does not cover any **CONSTRUCTION DEFECT** which would not have occurred in the absence of one or more of the excluded events or conditions listed in Exclusions, Section VI. A.1 a. – A.1.q., A.2. or A.3. above, regardless of:
  1. the cause of the excluded event or condition; or
  2. other causes of the loss or damage; or
  3. whether other causes acted concurrently or in any sequence with the excluded event or condition to produce the loss or damage.

## VII. Procedure to Request US To Perform Under This LIMITED WARRANTY

If **YOU** become aware of a condition that **YOU** believe is a **CONSTRUCTION DEFECT** under this **LIMITED WARRANTY**, **YOU** have the following responsibilities:

### A. Notification

**YOU** must notify **US** in writing as soon as it is reasonably possible after **YOU** have become aware or should have become aware of a **CONSTRUCTION DEFECT**, but in no event may **YOUR** written notice of a **CONSTRUCTION DEFECT** or **YOUR** written request for warranty performance be postmarked or received by **US** later than thirty (30) days after this **LIMITED WARRANTY** has expired.

If the written notice is postmarked or received by **US** more than thirty (30) days after the expiration of this **LIMITED WARRANTY**, **WE** shall have no obligation to remedy the **CONSTRUCTION DEFECT**. In order to establish a record of timely notification, **WE** recommend that written notice should always be sent by Certified Mail, return receipt requested.

### B. Cooperate With US

**YOU** must give **US** and any third parties acting on **OUR** behalf reasonable help in inspecting, investigating, testing (including destructive testing), monitoring, repairing, replacing or otherwise correcting an alleged **CONSTRUCTION DEFECT**. Help includes, but is not limited to, granting reasonable access to the **HOME** or **COMMON ELEMENTS** for the forgoing purposes. If **YOU** fail to cooperate or provide such reasonable access to the **HOME** or **COMMON ELEMENTS**, **WE** will have no obligation to do any of the foregoing.

### C. Do Not Make Voluntary Payments

**YOU** agree not to make any voluntary payments or assume any obligations or incur any expenses for the remedy of a condition **YOU** believe is a **CONSTRUCTION DEFECT** without prior written approval from **US**, or other parties authorized to act on **OUR** behalf. **WE** will not reimburse **YOU** for costs incurred where **YOU** did not obtain prior written approval.

However, **YOU** may incur reasonable expenses in making repairs in an **EMERGENCY CONDITION** without prior written approval, provided the repairs are solely for the protection of the **HOME** or **COMMON ELEMENTS** from further damage or to prevent an unsafe living condition and provided **YOU** notify **US** as soon as is reasonably possible. To obtain reimbursement for repairs made during an **EMERGENCY CONDITION**, **YOU** must provide **US** with an accurate written record of the repair costs.

#### D. Sign A Release

When **WE** or a third party designated by **US** or acting on **OUR** behalf have completed repairing, replacing or paying **YOU** as to any **CONSTRUCTION DEFECTS** or other related damage to the **HOME** or the **COMMON ELEMENTS** covered by this **LIMITED WARRANTY**. **YOU** must sign a full release of **OUR** obligation for the **CONSTRUCTION DEFECTS**. The release shall be applicable to the **CONSTRUCTION DEFECTS** and shall not prevent **YOU** from notifying **US** should **YOU** become aware of a subsequent **CONSTRUCTION DEFECT**.

#### E. If **YOU** Disagree With **US**

If **YOU** believe **WE** have not responded to **YOUR** request for warranty performance to **YOUR** satisfaction or in a manner that **YOU** believe this **LIMITED WARRANTY** requires, **YOU** may provide written notice to **PWC** requesting Mediation. Upon **PWC**'s receipt of written notice from **YOU**, **PWC** may review and mediate **YOUR** request by communicating with **YOU**, **US**, and any other individuals or entities that **PWC** believes may possess relevant information. If after forty-five (45) days, **PWC** is unable to successfully mediate **YOUR** request for warranty performance, or at any earlier time when **PWC** determines that **YOU** and **WE** are at an impasse, **PWC** will notify **YOU** that **YOUR** request for warranty performance remains unresolved and that **YOU** may elect to initiate Binding Arbitration. Binding Arbitration as described in the following section is the sole remedy for the resolution of disputes between **YOU** and **US** as set forth in the following section.

### VIII. Binding Arbitration Procedure

Any disputes between **YOU** and **US**, or parties acting on **OUR** behalf, including **PWC**, related to or arising from this **LIMITED WARRANTY**, the design or construction of the **HOME** or the **COMMON ELEMENTS** or the sale of the **HOME** or transfer of title to the **COMMON ELEMENTS** will be resolved by binding arbitration. Binding arbitration shall be the sole remedy for resolving any and all disputes between **YOU** and **US**, or **OUR** representatives. Disputes subject to binding arbitration include, but are not limited to:

- A. Any disagreement that a condition in the **HOME** or the **COMMON ELEMENTS** is a **CONSTRUCTION DEFECT** and is therefore covered by this **LIMITED WARRANTY**;
- B. Any disagreement as to whether a **CONSTRUCTION DEFECT** has been corrected in compliance with this **LIMITED WARRANTY**;
- C. Any alleged breach of this **LIMITED WARRANTY**;
- D. Any alleged violation of consumer protection, unfair trade practice, or any other statute;
- E. Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and any other claims arising in equity or from common law;
- F. Any dispute concerning the issues that should be submitted to binding arbitration;
- G. Any dispute concerning the timeliness of **OUR** performance and/or **YOUR** notifications under this **LIMITED WARRANTY**;
- H. Any dispute as to the payment or reimbursement of the arbitration filing fee;
- I. Any dispute as to whether this **LIMITED WARRANTY**, or any provision hereof, including, but not limited to any waiver hereunder, is unenforceable;
- J. Any other claim arising out of or relating to the sale, design or construction of **YOUR HOME** or the **COMMON ELEMENTS**, including, but not limited to any claim arising out of, relating to or based

on any implied warranty or claim for negligence or strict liability not effectively waived by this LIMITED WARRANTY.

The arbitration shall be conducted by Construction Arbitration Services, Inc., or such other reputable arbitration service that PWC shall select, at its sole discretion, at the time the request for arbitration is submitted. The rules and procedures of the designated arbitration organization, that are in effect at the time the request for arbitration is submitted, will be followed. A copy of the applicable rules and procedures will be delivered to YOU upon request.

This arbitration agreement shall be governed by the United States Arbitration Act (9 U.S.C. §§ 1 – 16) to the exclusion of any inconsistent state law, regulation or judicial decision. The award of the arbitrator shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.

Each party shall bear its own attorneys fees and costs (including expert costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between YOU and US. This filing fee shall be no more than the amount charged by the arbitration service to PWC for each arbitration. Contact PWC to determine the arbitration filing fee in effect at the time an arbitration is being requested. The arbitrator shall, as part of any decision, award to the party prevailing at the arbitration any applicable filing fees or other arbitration fees paid by that party.

The process for YOU to initiate arbitration is described below.

**Step 1** YOU complete a Binding Arbitration Request Form and mail it to PWC along with the appropriate arbitration filing fee. A Binding Arbitration Request Form is attached to this LIMITED WARRANTY. YOUR Binding Arbitration Request Form must be received no later than ninety (90) days after this LIMITED WARRANTY expires. YOU must still notify US of an alleged CONSTRUCTION DEFECT as soon as it is reasonably possible after YOU have become aware or should have become aware of the CONSTRUCTION DEFECT, but in no event later than thirty (30) days after expiration of this LIMITED WARRANTY. Please Note that while YOU have thirty (30) days after this LIMITED WARRANTY expires to notify US and ninety (90) days after it expires to file for arbitration, this time period does not extend the WARRANTY PERIOD for CONSTRUCTION DEFECTS. Additionally, no investigation, inspection, testing, repair, replacement, or payment, nor any promise of same by US under this LIMITED WARRANTY, nor any dispute resolution efforts, shall extend the term of this LIMITED WARRANTY or extend or toll any statutes of limitations or any of YOUR rights or remedies.

**Step 2** PWC Will Arrange the Arbitration Proceeding. The arbitrator or arbitration organization will notify YOU of the time, date and location of the arbitration hearing. Most often the hearing will be conducted at the HOME or the COMMON ELEMENTS or some other location that is agreeable to all the parties to the dispute. In scheduling the hearing the arbitrator will set a time and date that is reasonably convenient to all the parties.

**Step 3** The Arbitration Hearing. The parties at the arbitration hearing will include the arbitrator, YOU, US and/or a third party designated by US or acting on OUR behalf. Any party to the proceeding may be represented at the hearing. All persons who are parties to the arbitration, as well as representatives and witnesses, are entitled to attend hearings.

After evidence is presented by YOU, US or OUR representatives, a decision will be rendered by the arbitrator. The decision is final and binding on YOU and US. The arbitrator first will determine whether any claimed or alleged CONSTRUCTION DEFECT exists and whether it is OUR responsibility. Second, if the arbitrator finds US responsible for a CONSTRUCTION DEFECT, the arbitrator will determine the scope of any repair or replacement, OUR cost of any such repair or replacement, and the diminution in fair market value, if any, caused by such CONSTRUCTION DEFECT. Based upon the arbitrator's decision, WE shall choose whether WE shall (1) repair, replace the CONSTRUCTION DEFECT, (2) pay to YOU the actual amount it would cost US to repair or replace the CONSTRUCTION DEFECT or (3) PAY to YOU an amount equal to the diminution in fair market value caused by

the CONSTRUCTION DEFECT. The decision to repair, replace, or to make payment to YOU is at OUR or OUR authorized representative's sole option. In addition, the arbitrator shall render a decision resolving any other disputed matters or issues related to or arising from this LIMITED WARRANTY, the design or construction of the HOME or the COMMON ELEMENTS or the sale of the HOME or transfer of title to the COMMON ELEMENTS.

**Step 4** OUR Arbitration Performance Obligations. WE will comply with the arbitrator's decision no later than 60 days from the date of the award or other such date as may be specified or allowed in the decision. However, delays caused by circumstances beyond OUR or OUR representative's control shall be excused.

**Step 5.** If YOU believe WE Have Failed To Comply With The Award. YOU should contact PWC at its mailing address specified in this LIMITED WARRANTY if YOU believe WE have not complied with the arbitrator's award. PWC will mediate this dispute and if it cannot be resolved, will advise YOU that a compliance inspection arbitration is available to determine whether WE have performed adequately under the original arbitration award. PWC will communicate these findings to both US and YOU. If it is determined that WE have not properly performed, WE will be obligated to immediately comply.

PWC's sole responsibility is to administer this LIMITED WARRANTY on OUR behalf and as such PWC assumes no other liabilities in connection with this LIMITED WARRANTY. Under no condition or circumstance is PWC responsible for fulfilling any of OUR obligations under this LIMITED WARRANTY.

## IX. General Conditions

### A. Separation of This LIMITED WARRANTY From The Contract Of Sale

This LIMITED WARRANTY is separate and independent of the contract between YOU and US for the construction and/or sale of the HOME or transfer of the COMMON ELEMENTS. The provisions of this LIMITED WARRANTY shall in no way be restricted or expanded by anything contained in the construction and/or sales contract or other documents between YOU and US.

### B. Transfer to Subsequent HOMEOWNERS

This LIMITED WARRANTY will transfer to new owners of the HOME for the remainder of the WARRANTY PERIOD. YOU agree to provide this LIMITED WARRANTY to any subsequent purchaser of the HOME as a part of the contract of sale of the HOME. OUR duties under this LIMITED WARRANTY to the new HOMEOWNER will not exceed the limit of liability then remaining, if any.

### C. Transfer of Manufacturer's Warranties

WE assign to YOU all the manufacturer's warranties on all appliances, fixtures and items of equipment that WE installed in the HOME. Should an appliance or item of equipment malfunction YOU must follow the procedures set forth in that manufacturer's warranty to correct the problem. OUR obligation under this LIMITED WARRANTY is limited to the workmanlike installation of such appliances and equipment. WE have no obligation for appliances and equipment defined as CONSUMER PRODUCTS.

### D. Recovery Rights

If WE or a third party designated by US or acting on OUR behalf repairs, replaces or pays YOU as to a CONSTRUCTION DEFECT, or other related damage to the HOME or the COMMON ELEMENTS covered by this LIMITED WARRANTY, WE are entitled, to the extent of OUR payment, to take over YOUR related rights of recovery from other people and organizations, including but not limited to, other warranties and insurance. YOU have an obligation not to make it harder for US to enforce these rights. YOU agree to sign any papers, deliver them to US, and do anything else that is necessary to help US exercise OUR rights.

## E. General Provisions

1. If any provision of this **LIMITED WARRANTY** is determined to be unenforceable, such a determination will not affect the remaining provisions. If this **LIMITED WARRANTY** or any provision herein is determined to be unenforceable as to a **HOMEOWNERS ASSOCIATION** or a specific **HOMEOWNER**, such a determination will not affect the enforceability of this **LIMITED WARRANTY** or such provision as to any other **HOMEOWNERS ASSOCIATION** or any other **HOMEOWNER**. The issue of enforceability, as well as all other issues, will be determined by Binding Arbitration as provided for in this **LIMITED WARRANTY**.
2. This **LIMITED WARRANTY** and the binding arbitration process are binding on **YOU** and **US**. It is also binding on **YOUR** and **OUR** heirs, executors, administrators, successors, and assigns, subject to paragraph B of the **General Conditions**.
3. As may be appropriate, the use of the plural in this **LIMITED WARRANTY** includes the singular, and the use of one gender includes all genders.

## X. Definitions

**BUILDER** means the individual, partnership, corporation or other entity which participates in the Warranty Program administered by the Professional Warranty Service Corporation and provides **YOU** with this **LIMITED WARRANTY**. Throughout this document the **BUILDER** is also referred to as "**WE**", "**US**" and "**OUR**".

**COMMON ELEMENTS** means the property as specified in the recorded Covenants, Conditions and Restrictions as common area and any other property as to which the **HOMEOWNERS ASSOCIATION** has standing under the law to make a claim. This may include, but is not limited to, streets, slopes, the structure or components of enclosure or other parts of the **HOME**, corridors, lobbies, vertical transportation elements, rooms, balconies, clubhouses or other spaces that are for the common use of the residents of the development in which the **HOME** is located. **SYSTEMS** serving two or more **HOMES**, and the outbuildings that contain parts of such **SYSTEMS** are also included in this definition.

**CONSEQUENTIAL OR INCIDENTAL DAMAGES** means any loss or injury other than:

- A. **OUR** cost to correct a **CONSTRUCTION DEFECT** including the correction of those surfaces, finishes and coverings damaged by the **CONSTRUCTION DEFECT**;
- B. **OUR** cost of repair or replacement of furniture, carpet or personal property damaged by the **CONSTRUCTION DEFECT**. Should replacement be necessary, **OUR** obligation is limited to replacement with items providing the same function and quality and that are readily available at the time the item is being replaced.
- C. **OUR** costs of removal or replacement in order to repair or replace a **CONSTRUCTION DEFECT**;
- D. The reasonable cost of the **HOMEOWNER'S** alternative shelter where the **HOME** is uninhabitable due to a **CONSTRUCTION DEFECT** or where the **HOME** is rendered uninhabitable by the repair of the **CONSTRUCTION DEFECT**.

Diminished fair market value is considered "**CONSEQUENTIAL OR INCIDENTAL DAMAGE**" and is excluded under this **LIMITED WARRANTY** unless **WE** elect this remedy in lieu of the repair, replacement or other payment as to a **CONSTRUCTION DEFECT**.

**CONSTRUCTION DEFECT(S)** means a flaw in the materials or workmanship used in constructing the **HOME** that:

- materially affects the structural integrity of the **HOME** or the **COMMON ELEMENTS**; or
- has an obvious and material negative impact on the appearance of the **HOME** or the **COMMON ELEMENTS**;

or

- jeopardizes the life or safety of the occupants; or
- results in the inability of the **HOME** or the applicable **COMMON ELEMENTS** to provide the functions that can reasonably be expected in a residential dwelling.

**WE** and any arbitrator assigned to rule relative to a **CONSTRUCTION DEFECT** will consider both this definition and

Section III – A. (Standards By Which the Presence of a CONSTRUCTION DEFECT Will Be Determined) in determining the existence of a CONSTRUCTION DEFECT. A flaw is a CONSTRUCTION DEFECT if either WE or an arbitrator conducting a binding arbitration hearing declares the flaw to be a CONSTRUCTION DEFECT. OUR obvious and visible failure to complete the construction of the HOME or COMMON ELEMENTS, or any portion of the HOME or COMMON ELEMENTS, is not a CONSTRUCTION DEFECT.

CONSUMER PRODUCT means any item of equipment, appliance or other item defined as a CONSUMER PRODUCT in the Magnuson-Moss Warranty Act (15 U.S.C. §. 2301, et seq.) Examples of Consumer Products include, but are not limited to dishwasher, garbage disposal, gas or electric cook-top, range, range hood, refrigerator or refrigerator/freezer combination, gas oven, electric oven, microwave oven, trash compactor, garage door opener, clothes washer and dryer, hot water heater and thermostat.

EMERGENCY CONDITION means an event or situation that creates the imminent threat of damage to the HOME or COMMON ELEMENTS, or results in an unsafe living condition due to a CONSTRUCTION DEFECT that YOU (or as applicable, the HOMEOWNERS ASSOCIATION) become aware of at a point in time other than OUR normal business hours and YOU were unable to obtain OUR or OUR authorized representative's prior written approval to initiate repairs to stabilize the condition or prevent further damage.

HOME means a single family residence either attached or detached covered by this LIMITED WARRANTY or a condominium or cooperative unit in a multi-unit residential structure/building covered by this LIMITED WARRANTY.

HOME BUILDER'S LIMITED WARRANTY means only this express warranty document provided to YOU by US.

HOMEOWNER means the first person(s) to whom a HOME (or a unit in a multi-unit residential structure/building) is sold, or for whom such HOME is constructed, for occupancy by such person or such person's family, and such person(s)' successors in title to the HOME, or mortgagees in possession and any representative of such person(s) who has standing to make a claim on that person(s) behalf, including any class representative or HOMEOWNERS ASSOCIATION making a claim in a representative capacity.

HOMEOWNERS ASSOCIATION means a profit or nonprofit corporation, unincorporated association, organization, partnership, assessment district, limited liability company, limited liability partnership or other entity of any kind that owns, manages, maintains, repairs, administers, or is otherwise responsible for and has standing to make a claim as to any part of the COMMON ELEMENTS.

POLLUTANTS means all solid, liquid, or gaseous irritants or contaminants. The term includes, but is not limited to, petroleum products, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, radon gas, and waste materials, including materials to be recycled.

PWC means Professional Warranty Service Corporation which administers the warranty program in which WE participate. As such, PWC assumes no other liabilities in connection with this LIMITED WARRANTY. The PWC mailing address is:

Professional Warranty Service Corporation  
P.O. Box 800 Annandale, VA 22003-0800

SYSTEMS means the following:

- (a) Plumbing system - gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; and water, gas and sewer services piping and their extensions to the tie-in of a public utility connection or on-site well and sewage disposal system.
- (b) Electrical system - all wiring, electrical boxes, switches, outlets, and connections up to the public utility connection.
- (c) Heating, Cooling, and Ventilation system - all duct-work; steam, water and refrigerant lines; and registers, connectors, radiation elements and dampers.

WARRANTY PERIOD shall commence on the date the title to the HOME is transferred to the first HOMEOWNER. Notwithstanding anything to the contrary set forth in this LIMITED WARRANTY, the WARRANTY PERIOD for the COMMON ELEMENTS of an individual structure/building commences on the date the title for the first HOME in the structure/building is transferred to the first HOMEOWNER or as concerns clubhouses or outbuildings or other COMMON ELEMENTS not part of the HOME the date the title to these structures is transferred to the

HOMEOWNERS ASSOCIATION. The dates the WARRANTY PERIOD begins and ends are indicated on the Limited Warranty Validation Form which is attached to and made part of this LIMITED WARRANTY.

WE, US, OUR means the BUILDER.

YOU, YOUR means the HOMEOWNER and the HOMEOWNERS ASSOCIATION.

SAMPLE

BINDING ARBITRATION REQUEST FORM

Dear Homeowner (Homeowners Association):

Prior to requesting binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY, you should have sent your builder a clear and specific written request outlining the situation or condition that you are herein submitting to binding arbitration. If you have taken this step and believe the builder has not properly responded in accordance with the HOME BUILDER'S LIMITED WARRANTY, fill out this form and send it to PWC along with the arbitration filing fee. Be sure to attach a copy of all pertinent correspondence between you and your builder relative to the issue.

The information you need to fill out this form can be found on the Limited Warranty Validation Form. However, if you do not know the answers to any questions, write "Don't Know." Please do not leave any item blank.

Your name: \_\_\_\_\_

Address: \_\_\_\_\_

CITY

STATE

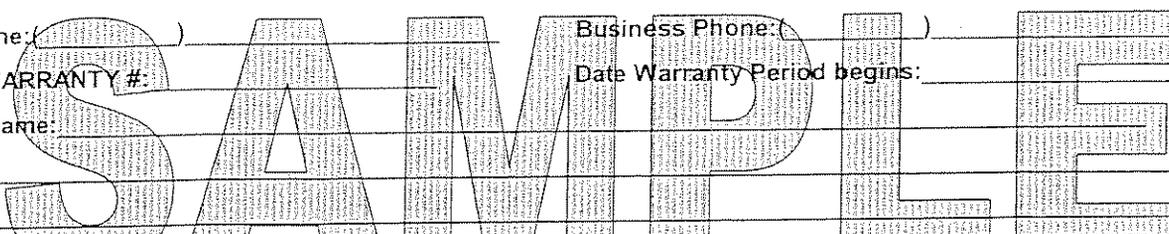
ZIP

Home Phone: ( ) Business Phone: ( )

LIMITED WARRANTY #: Date Warranty Period begins:

Builder's Name: \_\_\_\_\_

Address: \_\_\_\_\_



Describe the dispute that you wish to submit to binding arbitration under the terms of the HOME BUILDER'S LIMITED WARRANTY. If the dispute is relative to a construction defect please include information on when the construction defect(s) first occurred or when you first noticed the construction defect. (Attach additional sheets, if necessary).

I/we are hereby requesting PWC to initiate a binding arbitration to resolve the dispute described herein above.

\_\_\_\_\_  
Signature Date Signature Date

INSTRUCTIONS: Photo-copy this form and complete the fields.

Obtain the required arbitration filing fee by contacting PWC at 1-800/850-2799.

Send this Binding Arbitration Request Form and the arbitration filing fee to:

PROFESSIONAL WARRANTY SERVICE CORPORATION  
P. O. BOX 800  
ANNANDALE, VIRGINIA 22003-0800

# SUBSEQUENT HOME BUYER ACKNOWLEDGMENT AND TRANSFER

Any coverage remaining under the HOME BUILDER'S LIMITED WARRANTY applicable to the home specified on the Limited Warranty Validation Form is transferred to the subsequent homeowner. Any obligations under the HOME BUILDER'S LIMITED WARRANTY to any subsequent homeowner shall not exceed the limit of liability remaining at the time of transfer, if any.

The undersigned home buyer(s) hereby acknowledge and agree:

I/we acknowledge that I have reviewed, understand and agree to all the terms of the HOME BUILDER'S LIMITED WARRANTY document (PWC Form No. 117)

I/we understand and acknowledge that Professional Warranty Service Corporation ("PWC") is not the warrantor of the HOME BUILDER'S LIMITED WARRANTY.

I/we understand that I/we am responsible for the maintenance of the home including maintenance of the grade of the land surrounding the home, and that the builder shall not be responsible for any defect of damage to the home which is the result of my/our failure to maintain the home.

I/we acknowledge and agree to the Binding Arbitration Procedure contained in the HOME BUILDER'S LIMITED WARRANTY.

Signature(s) of Subsequent Home Buyer(s): \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

Print above name(s): \_\_\_\_\_

Re-issuance of the Limited Warranty Validation Form with the name(s) of the new Home Buyer(s) is not necessary for you to receive the coverage remaining under the HOME BUILDER'S LIMITED WARRANTY. Upon receipt of this signed form, PWC will update its records to reflect the name(s) of the new homeowner(s). If you want PWC to issue another Limited Warranty Validation Form with your name(s) on the form, please check the box below and send a check in the amount of \$20.00 made payable to "PWC" with your submission of this form.

YES, re-issue the Limited Warranty Validation Form in the above name(s)  (check box) Initial \_\_\_\_\_

Address of Home: \_\_\_\_\_

Limited Warranty No.: \_\_\_\_\_

INSTRUCTIONS: Photo-copy this form. Provide information requested, sign, fill in Limited Warranty # in the space provided (this number is provided on the Limited Warranty Validation Form), and provide a telephone number where you can be reached (\_\_\_\_\_) \_\_\_\_\_. If you want the Limited Warranty Validation Form reissued in your name, enclose your check to PWC in the amount of \$20.00 (check box above and initial). To reach PWC by phone, call: 1-800/850-2799.

Mail this form and a photocopy of applicable settlement/closing documents indicating transfer of title, to:

PROFESSIONAL WARRANTY SERVICE CORPORATION P.O. BOX 800 ANNANDALE, VA 22003-0800

EXHIBIT "K"

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Return by Mail ( ) Pickup (X) To:  
ATTENTION: MARGUERITE DAYSOG  
GENTRY HOMES, LTD.  
560 N. Nimitz Highway, Suite 210  
Honolulu, Hawaii 96817

ITC:

TOTAL NO. OF DOCUMENT PAGES:

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Document Title: DECLARATION OF CONDOMINIUM PROPERTY REGIME OF  
MONTECITO/TUSCANY III

Developer: GENTRY HOMES, LTD.

Property Description: LOTS 1 to 7, DPP File No. 2005/Sub-180  
LAND COURT APPLICATION NO. 1069  
LAND COURT CERTIFICATE OF TITLE NO. 792,716

***NOTE:** Gentry Homes, Ltd. intends to update the Lot and Map references and any applicable encumbrances as soon as the Land Court version of DPP File No. 2005/Sub-180 records.*

*Gentry Homes, Ltd. will also acquire the fee interest in and to the above specified lots at that time.*

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TMK No. (1) 9-1-10:007 (portion)

**DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF  
MONTECITO/TUSCANY III**

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**INTRODUCTION**

1. GENTRY HOMES, LTD., a Hawaii corporation, whose principal place of business and post office address is 560 North Nimitz Highway, Honolulu, Hawaii 96817 (the "Developer") is the master lessee of that certain real property described in the attached Exhibit "A" pursuant to the terms of that certain Short Form Amended and Restated Master Lease with Options to Purchase Real Property recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2234674. Said Short Form Amended and Restated Master Lease was amended by that certain Short Form Amendment to Master Lease with Options to Purchase Real Property recorded as Document No. 3143734 in said Office of the Assistant Registrar. Said Documents 2234674 and 3143734 are hereinafter collectively referred to as the "Master Lease".

2. GENTRY INVESTMENT PROPERTIES, a Hawaii limited partnership ("Gentry Investment Properties") owns in fee simple that certain real property described in the attached Exhibit "A". Gentry Investment Properties is the master lessor under the Master Lease. As the master lessor under the Master Lease, Gentry Investment Properties is willing to consent to the establishment of this Declaration, as further described below, strictly as an accommodation to the Developer to allow Developer to exercise its rights under the Master Lease. Developer is the sole party responsible for the development of the Project (as defined in Section 1(v) below), and Gentry Investment Properties shall have no obligations of the Developer under this Declaration. It is the intent of both Gentry Investment Properties and the Developer that Developer acquire the fee interest in the real property described in Exhibit "A" prior to any conveyance to individual apartment owners.

3. The Developer intends to establish a condominium that consists of the real property described in said Exhibit "A" and the improvements to be constructed on it.

4. The Developer intends to convey or cause the conveyance of separate fee simple apartments created by this Declaration, each together with an appurtenant and undivided interest in the common elements of the condominium created by this Declaration, by way of individual apartment deeds.

5. NOW, THEREFORE, the Developer, as declarant under this Declaration, hereby makes the following declaration:

**DECLARATION:**

1. **DEFINITIONS.** Defined terms appear throughout this Declaration with the initial letter of each such term capitalized. Unless the context clearly dictates otherwise, the following terms used in this Declaration are defined as follows:

(a) "**Act**" means the Condominium Property Regime Act, Chapter 514B, Hawaii Revised Statutes, as may be amended from time to time.

(b) "**Additional Land**" means Lots 16040 to 16045, Map 1254, Land Court Application No. 1069 as described in that certain Declaration of Intent to Merge recorded in the Office of the Assistant Registrar as Document No. 3314878. The Additional Land is subject to that certain Declaration of Condominium Property Regime of Montecito/Tuscany II recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3339428, as amended.

(c) **“Apartments”** means the fee simple apartments created by this Declaration, each together with an appurtenant and undivided interest in the common elements of the Project.

(d) **“Apartment Owners”** or **“Owners”** means all present and future owners of Apartments in the MONTECITO/TUSCANY III condominium project.

(e) **“Association”** means the Association of Apartment Owners of the MONTECITO/TUSCANY III, consisting of all Owners acting as a group in accordance with the provisions of this Declaration, the By-Laws and the Act.

(f) **“Board of Directors”** or the **“Board”** means the board of directors of the Association as created by this Declaration, the By-Laws and the Act.

(g) **“By-Laws”** means the By-Laws of the Association of Apartment Owners of MONTECITO/TUSCANY III concurrently recorded with this Declaration, which By-laws may be amended from time to time.

(h) **“Condominium Map”** means the plans showing the layout, location, building numbers, configuration and elevations of the buildings in the Project filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Condominium Map No. \_\_\_\_\_, as the same may be amended from time to time.

(i) **“Declaration”** means this Declaration of Condominium Property Regime of MONTECITO/TUSCANY III, as the same may be amended from time to time.

(j) **“Declaration of Intent to Merge”** means that certain Declaration of Intent to Merge recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3314878.

(k) **“Developer”** means Gentry Homes, Ltd., a Hawaii corporation, whose principal place of business and post office address is 560 North Nimitz Highway, Honolulu, Hawaii 96817.

(l) **“Developer’s Reserved Rights”** means those rights reserved unto the Developer as stated in this Declaration, including but not limited to those rights specified in Sections 17 to 17E, inclusive.

(m) **“Development Period”** means the period of time during which Developer exercises its rights under Sections 17 to 17E, inclusive, to create New Apartments and/or New Improvements. This period shall start on the date this Declaration is recorded and end upon the earlier of (i) December 31, 2010, or (ii) the date when the Developer records a document giving up all of the Developer’s Reserved Rights.

(n) **“Land”** means the real property described in Exhibit “A” and any appurtenances to it. If the Developer annexes any additional real property as described in Section 17C of this Declaration, the term the “Land” shall include this additional real property. If the Developer withdraws any real property as described in Section 17D of this Declaration, then the term the “Land” shall not include the withdrawn real property.

(o) **“Majority”** or **“Majority of Apartment Owners”** means the Owners of Apartments to which are appurtenant more than fifty percent (50%) of the common interest, and any specified percent of the Apartment Owners means the Owners of Apartments to which are appurtenant such percent of the common interest.

(p) **“Managing Agent”** means the managing agent appointed by the Association to operate the Project, as described in Section 12 below.

(q) **“Master Declaration”** means that certain Ewa by Gentry Community Area Declaration of Covenants, Conditions and Restrictions dated July 21, 1988, recorded in said Office of the Assistant Registrar as Document No. 1568352, as amended.

(r) **“Merged Area”** means the real property described as “the Land” in the Declaration of Intent to Merge. The Merged Area includes the real property described in Exhibit “A” of this Declaration; Lots 16020 and 16022 to 16028, inclusive, Map 1252, Land Court Application No. 1069; and Lots 16040 to 16045, Map 1254, Land Court Application No. 1069, as described in the Declaration of Intent to Merge.

Said Lots 16020 and 16022 to 16028 are subject to that certain Declaration of Condominium Property Regime of Montecito/Tuscany recorded in said Office of the Assistant Registrar as Document No. 3317144.

Said Lots 16040 to 16045 as subject to that certain Declaration of Condominium Property Regime of Montecito/Tuscany II recorded in said Office of the Assistant Registrar as Document No. 3339428.

(s) **“New Apartments”** means any Apartment created by Developer by one or more amendments to this Declaration pursuant to Developer’s Reserved Rights under Section 17A.

(t) **“New Improvements”** means any improvements that the Developer creates by one or more amendments to this Declaration pursuant to Developer’s Reserved Rights under Section 17B.

(u) **“Original Property”** means Lots 16020 and 16022 to 16028, inclusive, Map 1252, Land Court Application No. 1069 as described in that certain Declaration of Intent to Merge recorded in the Office of the Assistant Registrar as Document No. 3314878. The Original Property is subject to that certain Declaration of Condominium Property Regime of Montecito/Tuscany recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3317144, as amended.

(v) **“Project”** means the condominium project established by this Declaration and Condominium Map, as the same may be amended from time to time.

(w) **“Recreation Center”** means the recreation facilities that the Developer has constructed for use by Apartment Owners, as further described in Section 18.

(x) **“Reserved Unit”** means Apartment 11 located in the Project as shown on the Condominium Map. Developer reserves the right to redesignate the Reserved Unit, should additional phases be developed as outlined in Section 4 of this Declaration.

(y) **“Rules and Regulations”** means the Rules and Regulations of the Association of Apartment Owners of MONTECITO/TUSCANY III.

(z) **“Undeveloped Land Area”** means the portion of the Land as shown on the Condominium Map, as amended, which does not contain existing Apartments and upon which the Developer intends to construct New Apartments and/or New Improvements in future phases of the Project as outlined in Sections 4, 17A and 17B of this Declaration.

2. **SUBMISSION TO CONDOMINIUM PROPERTY REGIME.** The Developer, as declarant under this Declaration and Gentry Investment Properties, as the fee owner of the Land, hereby submit the Land and all improvements now existing or to be constructed on it, and all of its respective interest therein to a Condominium Property Regime established under the Act. Gentry Investment Properties' submittal of its interest in the Land is done strictly as an accommodation to the Developer to allow Developer to exercise its rights under the Master Lease. The Developer and Gentry Investment Properties further declare and agree that the property is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to this Declaration and the By-laws. This Declaration and By-Laws shall constitute equitable servitudes, liens, and covenants running with the Land and shall be binding on and inure to the benefit of the parties hereto, their respective heirs, devisees, personal representative, successors, successors in trust and assigns, and all subsequent owners, lessors and lessess of all or any part of the property and their respective heirs, devisees, personal representative, successors, successors in trust and assigns. All of the provisions of this Declaration are intended to create mutual servitudes upon each Apartment within the Project and to create reciprocal rights between the respective Apartment Owners.

3. **NAME.** The condominium property regime established by this Declaration shall be known as "MONTECITO/TUSCANY III".

4. **DESCRIPTION OF PROJECT.** The Developer plans to develop the Project in phases as follows:

**Tuscany 2, Phase 1** consists of sixteen (16) two-story buildings, each building being its own residential Apartment designated as **Apartments 1 to 16**, inclusive. None of said buildings have basements. The construction of the buildings is structural wood frame on concrete slab foundations with nonstructural wood frame interior walls with gypsum board. Exterior walls are sheathed with exterior gypsum sheathing and sided with pre-primed manufactured composite sidings. Roofs are constructed of engineered wood trusses, plywood sheathing and compositions shingles. The Undeveloped Land Area is a limited common element appurtenant to the Reserved Unit (currently designated as Apartment 11 in this Declaration), as further described in this Section 4 below and Sections 7.5 and 8.

**Tuscany 2, Phase 2** will consist of fifteen (15) two-story buildings. Each building will be its own residential Apartment. None of said buildings will have basements. The construction of said buildings will be structural wood frame on concrete slab foundations with nonstructural wood frame interior walls with gypsum board. Exterior walls will be sheathed with exterior gypsum sheathing and sided with pre-primed manufactured composite sidings. Roofs will be constructed of engineered wood trusses, plywood sheathing and compositions shingles.

**Tuscany 2, Phase 3** will consist of eighteen (18) two-story buildings. Each building will be its own residential Apartment. None of said buildings will have basements. The construction of said buildings will be structural wood frame on concrete slab foundations with nonstructural wood frame interior walls with gypsum board. Exterior walls will be sheathed with exterior gypsum sheathing and sided with pre-primed manufactured composite sidings. Roofs will be constructed of engineered wood trusses, plywood sheathing and compositions shingles.

**Tuscany 2, Phase 4** will consist of nineteen (19) two-story buildings. Each building will be its own residential Apartment. None of said buildings will have basements. The construction of said buildings will be structural wood frame on concrete slab foundations with nonstructural wood frame interior walls with gypsum board. Exterior walls will be sheathed with exterior gypsum sheathing and sided with pre-primed manufactured composite sidings. Roofs will be constructed of engineered wood trusses, plywood sheathing and compositions shingles.

**Tuscany 2, Phase 5** will consist of sixteen (16) two-story buildings. Each building will be its own residential Apartment. None of said buildings will have basements. The construction of said buildings will be structural wood frame on concrete slab foundations with nonstructural wood frame interior walls with gypsum board. Exterior walls will be sheathed with exterior gypsum sheathing and sided with pre-primed manufactured composite sidings. Roofs will be constructed of engineered wood trusses, plywood sheathing and compositions shingles.

**Tuscany 2, Phase 6** will consist of seventeen (17) two-story buildings. Each building will be its own residential Apartment. None of said buildings will have basements. The construction of said buildings will be structural wood frame on concrete slab foundations with nonstructural wood frame interior walls with gypsum board. Exterior walls will be sheathed with exterior gypsum sheathing and sided with pre-primed manufactured composite sidings. Roofs will be constructed of engineered wood trusses, plywood sheathing and compositions shingles.

**Tuscany 2, Phase 7** will consist of fifteen (15) two-story buildings. Each building will be its own residential Apartment. None of said buildings will have basements. The construction of said buildings will be structural wood frame on concrete slab foundations with nonstructural wood frame interior walls with gypsum board. Exterior walls will be sheathed with exterior gypsum sheathing and sided with pre-primed manufactured composite sidings. Roofs will be constructed of engineered wood trusses, plywood sheathing and compositions shingles.

The Developer has no obligation to build any phase after Tuscany 2, Phase 1. The Developer can develop the phases in any order that it wishes. It can also develop more than one phase at a time. The Developer can also divide a phase into separate smaller phases.

It is not the intention of the Developer to complete construction of the Reserved Unit as a residential unit until the last phase of the Project is complete. The Developer reserves the right to change the designation of the Reserved Unit, should the Developer build any phase after Tuscany 2, Phase 1, as outlined above. Specifically, Apartment 11 is the designated Reserved Unit and will not be renovated and made ready for residential occupancy until another apartment in a future phase is designated as the Reserved Unit. Until such time as Apartment 11 is no longer the Reserved Unit, the Developer will retain sole ownership of Apartment 11. Apartment 11 has an undivided percent of common interest of 87.068912 %, which includes the remaining undivided percent interest in the common elements of the Project that is not assigned to the Apartments in the Project. As is further described in Section 17A of this Declaration, it is the intention of the Developer to transfer, allocate and assign a portion of the common interest currently assigned to the Reserved Unit to each of the New Apartments that are created as future phases are incorporated into the Project. As the Project is developed and future phases are incorporated into the Project, the Developer shall have the right to exercise its reserved rights under this Declaration to amend this Declaration, to alter, modify and change the limited common elements appurtenant to the Reserved Unit, including, without limitation, the Undeveloped Land Area, and to convert the same into New Apartments, common elements and limited common elements.

**5. DESCRIPTION OF APARTMENTS.** Fee simple Apartments are hereby established within the underside of the concrete slabs, the outside of the roofs and the outer surfaces of the perimeter walls of each of the fifteen (15) residential Apartment units and the one (1) Reserved Unit of the Project. The Apartments are described in more detail in the attached Exhibit "B" and in the Condominium Map.

**5.1 Apartment Numbers and Locations.** The Apartments are numbered and located as shown on the Condominium Map. Each Apartment shall have its own street address.

**5.2 Layout and Area of Individual Apartments.** As shown on the Condominium Map, there are five (5) Tuscany 2 Apartment types (Plans 1, 2, 3, 4 and 5). Certain Apartments have an

optional exterior elevation as shown on the Condominium Map. The location, Apartment numbers, net Apartment interior floor area and number of rooms for each of the Apartments are shown in the attached Exhibit "B" and in the Condominium Map.

**5.3 Access to Common Elements.** Each Apartment has direct access to the grounds of the Project.

**5.4 Limits of Apartments.** Each Apartment includes the following:

(a) the perimeter walls, foundations, columns, girders, beams, floor, slabs, footings, supports, stairways, roofs, skylights (if any), ceilings, and floors located at the perimeter of the Apartment;

(b) the walls and partitions within the Apartment;

(c) the windows, window frames, louvers, shutters (if any), doors and door frames along the perimeter of the Apartment;

(d) the garage, entry and lanai (if any) as shown on the Condominium Map;

(e) all mechanical and electrical equipment originally installed and utilized for or serving only that one Apartment;

(f) any pipes, wires, vents, shafts, ducts, cables, conduits or other utility or service lines or enclosed spaces for wiring, pipes or air exhaust running through or otherwise located within the Apartment, which are utilized for or only serve the Apartment; and

(g) all of the originally installed fixtures and appliances.

Apartments do not include any pipes, wires, conduits or other utility lines running through any Apartment which are utilized by or serve more than one Apartment. These are common elements and are described below. Apartments also do not include the adjacent yard area shown on the Condominium Map, which are limited common elements as described below.

**6. COMMON ELEMENTS.** One fee simple interest is hereby designated in all of the remaining portions of the Project (the "common elements"), including specifically, but not limited to:

**6.1** The Land in fee simple;

**6.2** All yards, grounds, planting areas, gates, fences, retaining walls (if any), trash collection areas and walkways;

**6.3** All access lanes, roads, curbs, sidewalks and street lights;

**6.4** Visitor parking stall nos. 1 to 5, inclusive, and 111 to 114, inclusive, as shown on the Condominium Map;

**6.5** Installations for services such as pipes, cables, conduits, ducts, electrical equipment, wiring and other central appurtenant transmission facilities and installations over, under or across the Project which serve more than one Apartment for services such as power, light, gas, hot water, cold water, sewage, drainage, telephone, radio and television signal distribution, if any;

**6.6** Any apparatus and installations existing for common use, such as tanks, pumps, irrigation lines, motors, fans, compressors, ducts, vents and other such installations and apparatus; and

6.7 All other parts of the Project necessary or convenient to its existence, maintenance and safety or normally in common use.

7. **LIMITED COMMON ELEMENTS.** Certain parts of the common elements, "limited common elements," are set aside and reserved for the exclusive use of certain Apartments, and such Apartments shall have exclusive easements for the use of such limited common elements. These limited common elements are as follows:

7.1 Each Apartment shall have for its exclusive use the mailbox bearing the same designation as such Apartment.

7.2 Each Apartment shall have for its exclusive use and enjoyment the yard area which adjoins it as shown on the Condominium Map.

7.3 Apartments 2, 5, 9 and 14 have an additional parking stall located adjacent to the garage, for said Apartments' exclusive use and enjoyment. Apartment 4 has an assigned parking stall located adjacent to its limited common yard area as shown on the Condominium Map for said Apartment's exclusive use and enjoyment.

7.4 All other common elements of the Project which serve less than all of the Apartments in the Project shall be limited to the use of the Apartments that are served by such limited common element.

7.5 The Reserved Unit shall have for its exclusive use all of the Undeveloped Land Area.

8. **COMMON INTEREST.** Each Apartment shall have an appurtenant undivided interest in all of the common elements of the Project (the "percent of common interest"), which is the proportionate share of the Owner of the Apartment in the ownership of the common elements. The percent of common interest appurtenant to each Apartment is shown on the attached Exhibit "B". Except as otherwise provided in this Declaration, the percent of common interest shall also reflect the Owner's proportionate share in all of the common profits and expenses of the Project and shall be used to calculate the Owner's voting rights. Notwithstanding the foregoing, during the Development Period, Developer shall be responsible for all costs associated with the Undeveloped Land Area, the Recreation Center (except as provided in Section 18.3(b) and the Reserved Unit. In addition, all other costs for the Project shall be allocated to the Owner of each Apartment on a per unit basis, as set forth in Section 13.4.

8.1 **Common Interest Based on Future Development.** The Developer intends to develop the Project in several phases. Developer has calculated the common interests allocable to each Apartment based on the planned development of all of the Apartments described in Section 4 above on the real property described in Exhibit "A". The resulting common interest is shown in Exhibit "B".

8.2 **Allocation of Common Interest for Undeveloped Land Area.** The Developer has allocated to the Reserved Unit all of the common interest allocable to the Undeveloped Land Area. If and when the Developer creates New Apartments on portions of the Undeveloped Land Area, as described in Section 17A, the Developer has the right to reallocate the corresponding common interest of this area to the New Apartments.

8.3 **Alteration and Transfer of Interest.** Except as otherwise provided in Section 17A.2(B) or in any other Section of this Declaration, the common interest appurtenant to each Apartment, including the parking stalls appurtenant to each Apartment as a limited common element, shall be permanent in character and shall not be altered without the consent of all of the affected Apartment Owners, as expressed in a duly recorded amendment to this Declaration. The common interest shall not be separated from the Apartment to which it appertains and shall be deemed to be

conveyed or encumbered with the Apartment even though such common interest is not expressly mentioned or described in the conveyance or any other instrument. Ownership of the common elements shall remain undivided and no right shall exist to partition or divide any part thereof, except as otherwise expressed in the Act.

9. **EASEMENTS.** In addition to any easements described in Exhibit "A", the Apartments and common elements including the limited common elements, shall be subject to and shall have the following easements and reservations:

9.1 **Easements for Access and Support.** Each Apartment shall have appurtenant non-exclusive easements in the common elements for ingress to, egress from, utility services for and support, maintenance and repair of such Apartment, and shall also have an easement in the other common elements (subject, however, to the exclusive or limited use of the limited common elements) in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other Apartment Owners.

9.2 **Easement for Encroachment.** In the case of encroachments of common elements upon any Apartment or limited common elements, or in the case of encroachments of limited common elements or any Apartment upon the common elements or any other Apartment or limited common element, a valid easement for such encroachment and the maintenance thereof exists for as long as such encroachment continues. Provided however, that in no event shall an easement for encroachment exist if such encroachment occurred due to the willful and knowing conduct on the part of an Apartment Owner or occupant or the Association of Apartment Owners.

9.3 **Association's Easement for Access.** The Apartment Owners shall have the irrevocable right, to be exercised by the Board of Directors, to have access to each Apartment and any limited common elements from time to time during reasonable hours as may be necessary for normal maintenance or for making emergency repairs to prevent damage to the common elements or to another Apartment or Apartments. Access to each Apartment for normal maintenance must be at reasonable times and upon prior consent of the Apartment Owner.

9.4 **Developer's Easement for Sales Activities.** The Developer reserves the right for itself and its successors and assigns to (a) conduct extensive sales activities on the Project, including, without limitation, the right to use any Apartments owned by the Developer as model Apartments and sales office, and (b) to use the common elements (excluding limited common elements appurtenant to the Apartments other than those being used as models and sales offices) for extensive sales and marketing displays and activities. Such activities shall be permitted until the earlier to occur of (i) the end of the Development Period or (ii) the closing of the sale of the last unsold Apartment in the Merged Area. Notwithstanding the foregoing, if the Developer's mortgage lender or any successor to or assignee of the Developer's mortgage lender acquires any portion of the Merged Area in the course of any foreclosure or other legal proceedings or in the exercise of its mortgage remedies or by an assignment in lieu of foreclosure, such mortgage lender, its successors and assigns, shall have the right to conduct such extensive sales activities on the Merged Area until at least ninety-five percent (95%) of all of the Apartments to be developed in the Merged Area have been sold and deeds conveying title to those Apartments have been recorded in said Office of the Assistant Registrar. The Developer shall restore any damage to the common elements through the exercise of the rights reserved above to their condition immediately prior to such exercise.

9.5 **Developer's Easements for Access.** The Developer, its agents, employees, contractors, licensees, successors and assigns shall have an easement for ingress and egress over and across the Project for the construction of improvements on other portions of the Merged Area and to correct any defects and other punchlist items in the common elements or any Apartment or to exercise

any of the Developer's Reserved Rights as specified in this Declaration. This easement shall terminate upon the later of (i) the end of the Development Period or (ii) one year after the closing of the sale of the last unsold Apartment in the Merged Area.

**9.6 Developer's Right to Grant/Realign Easements.** The Developer does hereby reserve the right, for itself and its successors and assigns, to and until the later of (i) the end of the Development Period or (ii) the date of sale of the last Apartment unit in the Merged Area, to designate, delete, relocate, realign, reserve and grant easements and rights of way over, under and on the common elements and constituting a part thereof, provided that such easements and/or rights of way shall not be located on or within any existing structure on the Land and shall not unreasonably disturb, impair or interfere with the normal use and enjoyment of the Land by the Apartment Owners.

Each and every party acquiring an interest in the Project consents to such designation, deletion, relocation, realignment, reservation or grant of easements and/or rights of way as provided in this Section 9.6 and to the amendment or amendments of this Declaration and the recording thereof in said Office of the Assistant Registrar. Each such party acquiring an interest in the Project further agrees to execute such documents and instruments and do such other things as may be necessary or convenient to effect the same, and appoints the Developer and its assigns his attorney-in-fact with full power of substitution to execute such documents and instruments and to do such things on his behalf, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; provided that after the expiration of the Developer's reservation, the Association, through its Board of Directors, and with the consent and agreement of the holders of any then existing easements affected thereby, is authorized to grant, convey, transfer, cancel, relocate and otherwise deal with any and all such public services and utilities easements now or hereafter located on or affecting the Land or the Project without requiring any consideration therefore. To the extent that joinder of any Apartment Owner and lien holder or other person who may have any interest in the Land or the Project or any Apartment in it may be required in order to validate any act or thing done pursuant to the foregoing reservation, such joinder shall be accomplished by power of attorney from each of the Apartment Owners, lien holders or other such parties, and the acquiring or acceptance of ownership in an Apartment or of a lien covering an Apartment or any other interest in the Project or Land subject to this Declaration shall be a grant of such power, which grant, being coupled with an interest, is irrevocable.

**9.7 Developer's Easement for Noise, Dust and Other Nuisances.** The Developer, its agents, employees, contractors, licensees, successors and assigns shall have an easement over, under and upon the Project, to create and cause noise, dust, soot, smoke, odors, surface water runoff, vibrations and other nuisances or hazards in connection with (a) the exercise of any of Developer's easements as described in this Section 9, (b) the development of any portion of the Merged Area, or (c) the exercise of Developer's Reserved Rights as described in elsewhere in this Declaration. By execution of an Apartment deed, agreement of sale, lease, rental agreement, or mortgage for the Project, each person or entity executing such document waives any rights, claims or actions which such interested person or entity might have or might accrue in the future against the Developer, its agents, employees, contractors, licensees, successors and assigns as a result of any damage to such interested person's or entity's real or personal property, any inconvenience, annoyance or nuisance caused by Developer's easements described in this Section 9.

**9.8 Association's Easement Rights on Common Elements.** The Apartment Owners have the right exercisable by the Board, to designate, delete, relocate, realign, reserve and grant easements and rights of way over, under and on the common elements and any part thereof, provided that such easements and/or rights of way shall not be located on or within any existing structure on the Land and shall not unreasonably disturb, impair or interfere with the normal use and enjoyment of the Project

by any Apartment Owner. Provided, however, that during the Development Period, the Association must have the written consent of the Developer before it may exercise this right.

**10. PURPOSES OF AND RESTRICTIONS ON USE OF APARTMENTS.** Each Owner of an Apartment shall have the absolute right to sell, lease or otherwise transfer such Apartment, or his undivided interest in the Apartment, subject to all provisions of the Act, this Declaration and the By-Laws. No Apartment Owner shall sell, lease or otherwise transfer less than the entire Apartment and its appurtenant interest in the common elements, except by way of a transfer of an undivided interest in the Apartment. Any lease of an Apartment shall be in writing and shall be subject to the provisions of this Declaration and the By-Laws.

**10.1 No Hazardous Use of Apartments.** No Apartment Owner shall use his Apartment or appurtenant limited common elements for any purpose which will (a) injure the reputation of the Project, (b) jeopardize the soundness of the Project; (c) interfere with or unreasonably disturb the rights of other Owners and occupants; (d) reduce the value of the Project; or (e) increase the insurance rate or result in the cancellation of insurance on the Apartments or their contents. The Rules and Regulations provide further guidance regarding the use of the Apartments.

**10.2 Residential Use.** Apartments shall be occupied and used only as residential dwellings for the Apartment Owners, their families, tenants and social guests. Provided, however, that nothing shall prevent a person from pursuing his/her occupation if such person also uses the Apartment for residential purposes, has the necessary licenses or permits, if any, to pursue his/her occupation, has no employees working in or about the Apartment and does not advertise or offer any product or service for sale from the Apartment so as to generate increased pedestrian or vehicular traffic in the Project. Similarly, all garages shall be used for parking operational vehicles only and for storing outdoor items. No Apartment Owner shall be permitted to lease his Apartment, his garage or any portion thereof for transient or hotel purposes, which are defined as (a) rental for any period of less than thirty (30) days; or (b) any rental in which the occupants of the Apartments are provided customary hotel services such as room services for food and beverage, maid service, laundry and linen or bellboy service. The Apartments in the Project or any interest therein shall not be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any time-sharing purpose or under any time-sharing plan, arrangement or program, including without limitation, any so-called "vacation license", "travel club membership" or "time interval ownership" arrangement. The term "time-sharing" as used herein shall be deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess an Apartment or Apartments in the Project rotates among various persons on a periodically recurring basis according to a fixed or floating interval or period of time, whether by way of deed, lease, association or club membership, license, rental or use agreement, co-tenancy agreement, partnership or otherwise. Except for the foregoing, the Owner of an Apartment shall have the absolute right to lease such Apartment.

**10.3 Developer's Right to Use Its Apartments for Sales Purposes.** Notwithstanding anything to the contrary contained in this Declaration, the By-Laws or the Rules and Regulations, the Developer has the right use any Apartment that it owns or leases for promotional purposes or in connection with the initial sales of the Project.

**10.4 Exceptions for Persons With Disabilities.** Notwithstanding anything to the contrary contained in this Declaration, the By-Laws or the Rules and Regulations, owners or tenants with disabilities shall be allowed reasonable exemptions from this Declaration, the By-Laws and the Rules and Regulations, when necessary to enable them to use and enjoy their Apartments and the common elements, provided that any such owner or tenant shall first make such request in writing to the Board. The request shall specifically set forth the nature of the request and the reason that the requesting party needs to be granted such an exemption. The Board shall not unreasonably withhold or delay its consent

to such request. Any such request shall be deemed to be granted if not denied in writing, within forty-five (45) days of the Boards' receipt thereof, or within forty-five (45) days of the Boards' receipt of additional information reasonably required by the Board in order to consider such request, whichever shall occur later.

**11. ADMINISTRATION OF THE PROJECT.** Administration of the Project shall be vested in the Association of Apartment Owners of MONTECITO/TUSCANY III, consisting of all Apartment Owners of the Project. An Owner of an Apartment shall automatically, upon becoming the Owner of an Apartment, be a member of the Association. Each Owner shall remain a member of the Association until his ownership ceases. The Association shall have the power to enact resolutions, rules and regulations, and have the power to amend and repeal the same from time to time, reasonably restricting and regulating the use of the Apartments and the common elements. Any such resolutions, rules or regulations shall be consistent with the terms of this Declaration and the By-Laws.

Operation of the Project and maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto, shall be according to the provisions of the Act, this Declaration and the By-Laws and shall include but not be limited to the following:

**11.1 Association to Maintain and Repair Common Elements.** The Association shall make, build, maintain and repair all sewers, drains, roads, curbs, sidewalks, street lights and other improvements which may be required by law to be made, built, maintained and repaired in connection with or for the use of the Project.

**11.2 Association to Comply With All Governmental Rules and Regulations.** The Association shall keep all common elements of the Project in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority during the period that they are applicable to the Project.

**11.3 Time Frame for Repairs.** The Association shall repair, maintain and keep all common elements of the Project in good order and condition. Any and all defects in the common elements of the Project must be repaired by the Association within thirty (30) days after any Apartment Owner or his agent gives notice of such defect, or within such additional time as may be reasonably necessary to complete such work diligently. Each Apartment Owner shall be responsible for the maintenance of the Apartment Owner's Apartment and limited common element yard area.

**11.4 Private Drainage System.** The Project is part of a private drainage system that connects to the City and County of Honolulu's municipal sewer system. As such, Federal regulations prohibit the following from being discharged into the Project's drainage system:

- (a) domestic wastewater;
- (b) industrial wastewater;
- (c) any debris, refuse or solid waste or yard waste;
- (d) chlorinated swimming pool water;
- (e) washwater from vehicle and equipment cleaning; and
- (f) oil and petroleum products.

Owners are prohibited from discharging any of the above into the Project's drainage system.

The Association is solely responsible for the maintenance and upkeep of the Project's sewer and drainage system. It shall cooperate with the Developer in assuming the Developer's National

Pollutant Discharge Elimination System (NPDES) Permit No. H10021229 and shall be responsible for enforcing the terms and conditions of the NPDES Permit.

**11.5 Bonding Requirements.** Before commencing or permitting construction of any improvement on the Project costing in excess of TEN THOUSAND DOLLARS (\$10,000.00), the Association must obtain a bond or certificate naming as obligees, collectively, all Apartment Owners and their respective mortgagees, as their interests may appear, in a penal sum not less than ONE HUNDRED PERCENT (100%) of the cost of such construction with a surety authorized to do business in the State of Hawaii, guaranteeing performance of such construction free and clear of all mechanics' and materialmen's liens and liens in lieu of mechanics' and materialmen's liens arising under the Act.

**11.6 No Unlawful Use of Property.** The Association must not make or suffer any strip or waste or unlawful, improper or offensive use of the Project.

**11.7 Setback Requirements.** The Association shall observe any setback lines affecting the Project and shall not erect, place, or maintain any building or structure whatsoever except approved fences or walls between any street boundary of the Project and the setback lines along such boundary, except as may be allowed by any future Agreement for Issuance of Conditional Use Permit Under Section 21-5.380 of the Land Use Ordinance (LUO) recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

**11.8 Requirements for New Structures.** The Association shall not erect or place on the Project any building or structure including fences and walls, nor make additions or structural alterations to, or exterior changes of, any common elements of the Project except according to plans and specifications, including detailed plot plans prepared by a licensed architect and approved by a majority of Apartment Owners (or such percent as required by law or this Declaration), and one hundred percent (100%) of all Owners whose Apartment and limited common areas are directly affected. Such approval shall be evidenced by recordation of an amendment to this Declaration and the Condominium Map. Developer's consent will be required during the Development Period.

**12. MANAGING AGENT AND SERVICE OF PROCESS.** Operation of the Project shall be conducted for the Association by a responsible corporate Managing Agent appointed by the Association in accordance with the By-Laws. The Developer appoints Hawaiiana Management Company, Ltd., whose principal place of business and post office address is 711 Kapiolani Boulevard, Suite 700, Honolulu, Hawaii 96813 as the initial Managing Agent. The initial Managing Agent is hereby designated as the exclusive agent to receive service of process until the Board of Directors and officers of the Association are elected. Once the Board of Directors is elected, process may be served upon any member of the Board of Directors of the Association who has a residence or place of business within the City and County of Honolulu, Hawaii.

**13. COMMON PROFITS AND EXPENSES.** The profits of the Project shall be distributed among, and the common expenses shall be charged to, the Apartment Owners, including the Developer, in proportion to the common interest appurtenant to their respective Apartments, except as otherwise provided in this Declaration or in the By-Laws. No Apartment Owner may exempt himself from liability for said common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of said Owner's Apartment.

**13.1 Definition of Common Expenses.** The term "common expense" means and includes the expenses of operation of the Project and all sums designated as common expenses under the Act, this Declaration, or the By-Laws, including all labor, services, materials, utility services and equipment; all liability whatsoever for loss or damage arising out of or in connection with the common elements, including any accident, fire, or any nuisance; all premiums for fire and extended coverage and liability insurance required for the Project; and the cost of all utility services, including water, electricity,

garbage disposal and any other similar service unless separately metered. Real property taxes and special assessments referred to in Section 514B-4, Hawaii Revised Statutes, as may be amended from time to time, shall not be common expenses of the Project.

**13.2 Definition of Limited Common Expenses.** The term “Limited Common Expenses” means and includes all charges, costs and expenses unique to a particular Apartment or group of Apartments that includes fewer than all the Apartments in the Project. Such Limited Common Expenses shall be allocated to that particular Apartment or group of Apartments. If more than one Apartment incurs such Limited Common Expenses, the costs shall be evenly divided among such Apartments incurring said Limited Common Expenses on a per unit basis. The Developer shall be solely responsible for all of the reasonable costs and expenses for the maintenance, repair, upkeep and security of the Undeveloped Land Area, as a Limited Common Expense of the Reserved Unit.

**13.3 Commencement of Assessments.** Each Apartment Owner shall be assessed for his share of the common expenses of the Project. Assessments for each phase will start on the date an Architect’s “As-Built” Certificate covering such phase is issued by the Developer and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii. The first installment of Common Expenses will be prorated for each Apartment from the date that the Architect’s “As-Built” Certificate was recorded. Provided, however, that the Developer may elect to delay the commencement of such assessments until the Developer sends the Apartment Owners written notice that, after a specified date, the Apartment Owners shall be obligated to pay for the portion of common expenses that is allocated to their respective apartment. Written notice shall be mailed to the Apartment Owners, the Association and the managing agent, at least thirty (30) days before the specified date. All subsequent assessments will be payable in advance in monthly installments on the first day of each month or at any other time as the Board shall determine.

**13.4 Basis for Assessments during the Development Period.** During the Development Period, an Apartment Owner will pay for the common expenses incurred in connection with only the phases of the Project for which an Architect’s “As-Built” Certificate has been recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii. These common expenses will be allocated among the Apartment Owners on a per unit basis. In other words, the common expenses will be divided equally among all of the Apartments for which an As-Built Certificate has been recorded. During the Development Period, the Developer will be responsible for all costs associated with any Apartments for which an As Built-Certificate has not been recorded, the Recreation Center (except as provided in Section 18.3(b)) and the Undeveloped Land Area.

**13.5 Expenses Due to Negligence.** Notwithstanding the foregoing, all charges, costs and expenses incurred by the Association which are necessitated by the negligence, misuse or neglect of an Apartment Owner or occupant shall be charged to such Apartment Owner or to such Apartment Owner renting or leasing or otherwise allowing such occupant, as a special assessment secured by the lien of this Section 13.5.

## **14. DAMAGE AND DESTRUCTION.**

**14.1 Rebuilding by the Association in the Event of an Insured Casualty.** The Association shall maintain property (hazard) insurance covering all of the Apartments in the Project, pursuant to the provisions of the By-laws. If at any time any improvements of the Project are damaged or destroyed by any casualty insured against as provided under the Act and the By-Laws (an “insured casualty”), the Association shall hire one or more contractors to rebuild or repair the damaged improvements unless the Apartment Owners elect to not rebuild, in accordance with the provisions of Section 14.3 below. The Association will rebuild and repair the improvements according to their design just before the damage occurred. If it cannot do this (for example, if changes in the law prevent it), then the Association will rebuild or repair the improvements according to a new design, which must comply

with all laws then in effect. The plans and specifications for such new design must first be approved by the Board and by any lender having a mortgage on the Apartment(s) being repaired or rebuilt.

**14.2 Shortfall of Insurance Proceeds.** If there are not enough insurance proceeds to pay the full cost to repair and/or rebuild any of the common elements, then the Association can pay the shortfall from the Association's replacement reserve fund. If this is not enough, then the Association must (i) determine the amount of the remaining shortfall, and (ii) charge a special assessment to all of the Apartments in the Project, except for Apartments that are damaged but are not being rebuilt. The special assessment will be allocated among the Apartments on a per unit basis. If there are not enough insurance proceeds to pay the full cost to repair and/or rebuild an Apartment or its limited common element, the Association shall charge a special assessment to the Owner of the Apartment for any costs insured in excess of the insurance proceeds for repairing and/or rebuilding such Apartment or its limited common elements.

**14.3 Election to Not Rebuild after an Insured Casualty.** In the event of an insured casualty of all or any part of the Project, the Association shall cause the rebuilding or restoration of the damaged improvements, as provided in this Section 14, unless eighty percent (80%) or more of the Apartment Owners (including the Owners of at least 80% of the damaged Apartments) vote against rebuilding, repairing or otherwise reinstating the improvements. If the Project is merged with other condominium communities in the Merged Area, as provided for in Section 17C, the vote to not rebuild must be by at least eighty percent (80%) of the Apartment Owners in the Merged Area. The vote shall be taken at a meeting of the Association held prior to the commencement of the rebuilding, repair or other reinstatement of the improvements and within ninety (90) days after such loss or damage has occurred, or within thirty (30) days after the insurance loss has been finally adjusted. During the Development Period, the Developer's consent shall also be required for any election to not rebuild the improvements.

If the election is made to not rebuild or repair a particular Apartment or its limited common elements, then the insurance proceeds shall be used first to remove all remains of the Apartment and its limited common elements and to restore the site to a good orderly condition and grade. Thereafter, the part of the insurance proceeds that is allocable to that Apartment shall be paid to the Owner and to any lender having a mortgage on that Apartment.

**14.4 Release of Claims.** To the extent that the Association's insurance covers any loss, damage or destruction to any part of the Project, the Association and the Owners will have no claim or cause of action for that loss, damage or destruction against the Developer, the Managing Agent, the Association or any of their representatives, or against any Apartment Owner (except for any special assessment charged under Section 14.2) or any person under any of them. To the extent that any loss, damage, or destruction to the property of any Apartment Owner or anyone under the Apartment Owner is covered by insurance purchased by that Owner, the Owner will have no claim or cause of action for that loss, damage, or destruction against the Association, the Developer, the Managing Agent, or any other Apartment Owner, or any person under any of them.

**14.5 Uninsured Casualty.** If any improvements of the Project are damaged or destroyed by any casualty not insured against, such improvements shall rebuilt, repaired or restored unless seventy-five percent (75%) or more of the Apartment Owners decide not to repair, rebuild or restore the improvements. If the Project is merged with other condominium communities in the Merged Area, as provided for in Section 17C, the vote to not rebuild must be by at least seventy-five percent (75%) of the Apartment Owners in the Merged Area. During the Development Period, the Developer's consent shall also be required for such election. Unless the decision has been made to not rebuild or restore, the Association shall diligently work to repair, rebuild or restore the common elements, except for the limited common elements, and will pay the cost thereof as a common expense. The Apartment Owners shall be solely responsible for any restoration of their respective Apartments, according to the

original plans and elevations reflected in the Condominium Map, or such other plan approved according to this Declaration. Unless such restoration is undertaken within a reasonable time after such casualty, the Association at its common expense shall remove all remains of the damaged and destroyed improvements and restore the site to good orderly condition and even grade.

**15. CONDEMNATION.** If there is a taking in condemnation or by eminent domain of part or all of the Project, all compensation payable for or on account thereof shall be payable to a condemnation trustee, who shall be designated by the Board and who shall be a bank or trust company doing business in the State of Hawaii (the "Condemnation Trustee"). Each Apartment Owner gives the Association a special power of attorney to represent the Owner in any proceedings, negotiations, settlements or agreements related to any actual or threatened condemnation of the Project or any part of it. However, the Developer may represent itself with respect to any right or claim it may have to proceeds payable for the Developer's Reserved Rights.

**15.1 Division of Proceeds Between the Developer and the Owners.** If all or any part of the Project is taken or is sold under threat of condemnation before the end of the Development Period, then the condemnation proceeds must first be divided between the Developer and the Apartment Owners. The Developer will be entitled to receive all proceeds payable to or on account of the loss of the Developer's Reserved Rights. This includes, for example, (i) the right to all proceeds paid for any part of the Land that the Developer has the right to withdraw under Section 17D, including all of the Undeveloped Land Area, and (ii) the right to all proceeds paid for Improvements made by the Developer to serve phases or increments of the Project to be built in the future. The amount payable to the Developer under this Section 15.1 shall be based upon the court's final decision as to such allocation, if such a decision is made. If a court has not made such determination, then the amount payable to the Developer shall be based upon the value of the Developer's Reserved Rights, as determined by a qualified appraiser pursuant to Section 15.2 below. After payment to the Developer as set forth above, the balance of the condemnation proceeds shall be payable to the Apartment Owners, or shall be used by the Condemnation Trustee as set forth in Section 15.3 below. The amounts allocable to the various Apartment Owners affected by the condemnation action shall be determined by the court (if the court has made such a determination) or by a qualified appraiser, as set forth in Section 15.2 below.

**15.2 Determination by Qualified Appraiser.** If the allocation of condemnation proceeds shall be made by an appraiser, as set forth in Section 15.1 above, then such determination shall be made by a real estate appraiser who must be a member of the American Institute of Real Estate Appraisers (a "qualified appraiser"). If a single qualified appraiser acted on behalf of the Developer and the Association in the condemnation proceedings, then such appraiser shall act as the appraiser to make the determinations under this Section 15. If more than one appraiser represented the Developer and/or the Association, then the Board and the Developer shall choose an appraiser. If they are unable to agree upon a single appraiser within ten days after request to do so is made by either party, then they shall each appoint an appraiser within fifteen days thereafter, and the two appointed appraisers shall select a third appraiser. If either party fails to choose an appraiser on time, then the appraiser chosen by the other party will make the determination on its own. Otherwise, the decision of any two appraisers will decide how much to pay the Developer or how much to pay to each Apartment Owner. The costs of the appraiser(s) will be divided equally among the parties involved in the condemnation.

**15.3 Partial Taking.** If only part of the Project is taken, and if the Association does not decide to terminate the condominium property regime, then the Condemnation Trustee must (i) pay to the Developer the Developer's share of the condemnation proceeds for the Developer's Reserved Rights, as provided in Section 15.1 above, and (ii) use the rest of the proceeds in the manner set forth below. The Condemnation Trustee shall arrange for the repair and restoration of the buildings and improvements according to the Condominium Map on file immediately prior to such condemnation. If such repair and restoration according to the Condominium Map on file is not permissible under the laws then in force,

then repair and restoration shall be according to such modified plan as is previously approved by the Board. If a partial taking occurs in which any Apartment is eliminated or not restored, the Condemnation Trustee shall disburse the portion of the proceeds of such award allocable to the Apartment, less the Apartment's proportionate share of the cost of debris removal, to the Owner of the Apartment and his mortgagee, if any, as their interests may appear, in satisfaction of their interests in the Apartment. The Condemnation Trustee shall disburse the remainder of the proceeds of such award to the contractor engaged in such repair and restoration in appropriate progress payments. If such proceeds are insufficient to pay the costs, the Board is expressly authorized to pay such excess costs from the General Operating Reserve and Capital Improvements Reserve Fund and if the General Operating Reserve and Capital Improvements Reserve Fund are insufficient for this purpose the Board shall levy a special assessment on the Owners of the Apartments in proportion to their common interests. If sums are received in excess of the cost of repairing and restoring the remaining buildings and improvements, such excess proceeds shall be divided among the Owners of the Apartments according to their common interests.

**16. ALTERATION OF PROJECT.** Except as otherwise provided for in this Declaration and the By-Laws, the Association or individual Apartment Owner shall not construct any additional structure or make any structural alterations or additions to an existing structure without first obtaining the affirmative vote or written consent of seventy-five percent (75%) of the Apartment Owners and filing an amendment to this Declaration and Condominium Map to reflect such change. This provision shall not apply to the Developer during the Development Period, when Developer is exercising its reserved rights as outlined in this Declaration. This provision shall also not apply to the extent it conflicts with any provision of the federal Fair Housing Act (42 U.S.C. Sec 3601, et seq) as the same has been amended and may be further amended from time to time.

**16.1 Optional Floor Plans Shown on the Condominium Map.** Notwithstanding the foregoing, an Apartment Owner may add any optional floor plan shown on the Condominium Map for that Apartment's particular floor plan without amending the Condominium Map, provided the Apartment Owner first obtains approval from the Board and any necessary governmental permits and approvals. The Board shall not unreasonably withhold or delay its consent to such request, and any such request shall be deemed to be granted if not denied in writing within forty-five (45) days of the Board's receipt thereof or within forty-five (45) days of the Board's receipt of additional information reasonably required by the Board in order to consider such request, whichever shall occur last.

**16.2 Limited Approval for Certain Floor Plans.** Notwithstanding anything in this Declaration to the contrary, an Apartment Owner need only obtain the consent of the Board and any necessary governmental permits and approvals for changes to the layout of an Apartment that do not increase or decrease the total area of the building and limited common element yard area covered by the original Apartment (also known as the "building footprint") by more than a hundred square feet (100 sq. ft.). As used in this paragraph the original Apartment shall mean the Apartment as originally constructed by the Developer. Upon obtaining the necessary approvals, the Apartment Owner shall file a revised set of floor plans, amending the Condominium Map. This amendment need only be signed by the Apartment Owner and the Board.

**17 DEVELOPER'S RESERVED RIGHTS.** The Developer's Reserved Rights outlined in Sections 17 to 17E, inclusive, are necessary and/or helpful to developing the Project in phases. The Developer may exercise the Developer's Reserved Rights stated in this Declaration separately or in one or more combinations and at one or more times, at the Developer's sole discretion. The Developer has no duty or obligation to exercise the Developer's Reserved Rights. The Developer may exercise the Developer's Reserved Rights until the expiration of the Development Period.

The Developer may exercise any of the Developer's Reserved Rights stated in this Declaration (including without limitation the Developer's Reserved Rights set forth in Sections 17A through 17E, inclusive) without being required to obtain the approval, consent, or joinder of anyone else and without the knowledge of anyone else. This includes but is not limited to the Association of Apartment Owners, any lender, or any other Apartment Owner or other person acquiring an interest in the Project. When a person or entity acquires an interest in an Apartment or any other interest in the Project, said person or entity automatically:

- A. Takes said person's or entity's interest subject to the Developer's Reserved Rights and each and every exercise and/or assignment of them;
- B. Acknowledges, approves, consents to, agrees to and accepts (i) the Developer's Reserved Rights and the exercise of them from time to time; (ii) that such exercise may change the Project; (iii) that such exercise may result in the recalculation of the common interest of some or all Apartments in some cases; (iv) that the Developer can file and/or record any and all documents that the Developer deems necessary or convenient to the exercise of its rights, including but not limited to any amendment to the condominium documents.
- C. Agrees, promptly after being asked to do so, to join in, consent to, sign, have notarized, deliver and record all documents and do all other things that the Developer in its sole discretion determines to be necessary or convenient to the exercise of the Developer's Reserved Rights or to accomplish the purpose for which those rights were reserved (as determined by the Developer).
- D. Appoints the Developer as said person's or entity's attorney-in-fact with full power of substitution to execute such documents and do such other things on said person's or entity's behalf, which grant of such power, being coupled with an interest, is irrevocable and shall not be affected by the disability of any such party. The Developer cannot use its power of attorney under this Section 17 to waive or release any right an Owner or other interested person might have under the Act, to cancel the purchase of an Apartment, or to mortgage an Owner's Apartment.

**17A. DEVELOPER'S RESERVED RIGHT TO CREATE NEW APARTMENTS.** Any other provision in this Declaration or the By-Laws notwithstanding, the Developer shall have the right (but not the obligation) at its sole discretion under this Section 17A, to create one or more New Apartments in the Project and to create and designate common elements and limited common elements appurtenant to any New Apartment. The Developer may do this more than once and at any time prior to the expiration of the Development Period.

**17A.1 Limits on Developer's Reserved Rights to Create New Apartments.** The Developer's Reserved Rights in this Section 17A are subject to the following terms and conditions:

- A. Developer may only create New Apartments in the Undeveloped Land Area (as defined in Section 1(z)) and/or in the Merged Area (as defined in Section 1(r)).
- B. The total number of Apartments in the Project may not exceed the limits contained in the zoning code applicable to the Land.
- C. The Developer must pay all costs of creating the New Apartments and designating or converting the use of common elements or limited common elements.

**17A.2 Extent of Developer's Reserved Right to Create New Apartments.** Subject to the above limitation, the Developer's Reserved Right to create New Apartments include the right to do

anything necessary or convenient to create the New Apartments or to designate or convert the use of common elements or limited common elements, including but not limited to the right to do the following:

A. to execute and record one or more amendments to this Declaration and Condominium Map, that describes the New Apartments. The amendment shall include a certificate signed by a registered architect or professional engineer as specified in Section 514B-34 of the Act;

B. to allocate a portion of the common interest currently assigned to the Reserved Unit to the New Apartments by executing and recording an amendment to this Declaration;

C. to designate or convert the use of common elements or limited common elements to New Apartments by recording an amendment to this Declaration;

D. to amend any previously recorded deed or other document conveying or encumbering an Apartment so that it conforms with the revised Declaration and/or to record a new deed or conveyance document for that purpose. For example, if the Developer creates New Apartments, it may need to adjust the common interest of each existing Apartment. If so, the Office of the Assistant Registrar of the Land Court of the State of Hawaii may require the Developer to change the deeds for existing Apartments to reflect the such change in common interest or it may require that the Developer issue replacement deeds reflecting such change in common interest.

**17A.3 Impact of Exercise of Developer's Reserved Right to Create New Apartments.** Upon the recordation of an amendment to this Declaration and the Condominium Map as outlined above, the following will take place:

A. The New Apartments will become condominium Apartments and will be part of the Project for all intents and purposes. The limited common elements will be appurtenant to the New Apartments to which they are assigned. The owner of a New Apartment may deed it, lease it or otherwise encumber it just the same as if the New Apartment had been created from the beginning of the Project.

B. The Developer will be the owner of each New Apartment and its common interest until the Developer conveys it to someone else. Nobody else except the Developer will have any legal or equitable rights in or to the New Apartments and its common elements.

C. The Owners of all Apartments (including the New Apartments) will have the right to use the common elements of the Project to the same extent and subject to the same limits, just as if the Project had been developed with the New Apartments from the beginning.

**17B. DEVELOPER'S RESERVED RIGHT TO CONSTRUCT NEW IMPROVEMENTS.** Any other provision in this Declaration or the By-Laws notwithstanding, the Developer shall have the right (but not the obligation) at its sole discretion under this Section 17B, at any time to design, designate, develop, build, add to and complete new improvements ("New Improvements") on the Land. The Developer may do this more than once and at any time prior to the expiration of the Development Period.

**17B.1 Limits on Developer's Reserved Rights to Construct New Improvements.** The Developer's reserved rights in this Section 17B are subject to the following terms and conditions:

A. A licensed architect or engineer must prepare plans and specifications for the New Improvements. The Developer must obtain all necessary governmental approvals and permits for the New Improvements. The Developer must build the New Improvements substantially in accordance with the plans and specifications.

**B.** The plans and specifications for the New Improvements shall not require any material change to or the demolition of any existing Apartment or limited common element, except if that Apartment and limited common element is owned by the Developer. The Developer has a right to connect to, use, relocate and/or realign improvements to the Project to provide electricity, hot and cold water, air conditioning and other utilities and services, and when applicable, to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the common elements of the Project as necessary and desirable. The Developer must do this in a way that does not cause any permanent interruption in the service of utilities to any other part of the Project.

**C.** The Developer must pay all costs and expenses for the design, development and construction of the New Improvements. The Developer makes no promise as to when construction of any new phase will commence or be completed. Until construction of any new phase is substantially completed, the cost associated with any New Apartments, common elements and limited common elements shall be the sole responsibility of the Developer. Developer shall be solely responsible for all costs and expenses to reasonably maintain, repair, upkeep and provide security for the Undeveloped Land Area. For safety and other reasons, the Developer intends to fence off, screen or otherwise secure the Undeveloped Land Area and to severely limit and restrict access to such Undeveloped Land Area by all other Apartment Owners and any other person. Each Apartment Owner and every other interested person: (i) agrees to stay out of the Undeveloped Land Area and any specifically fenced areas until access to such area is specifically authorized by the Developer, and to see that the Apartment Owner's representatives, licensees and invitees also do so; (ii) acknowledges and agrees that the ongoing construction will result in noise, dust and increased traffic in and around the Project for a period of time; (iii) acknowledges and agrees that care must be taken around construction sites, as certain hazardous conditions relating to the construction may exist for a period of time.; (iv) acknowledges and agrees that Developer will make efforts to minimize dust but that dust and debris is an inevitable result of the ongoing construction; (v) waives any rights, claims or actions which the Apartment Owner might otherwise have against the Developer as a result of any damage to Apartment Owners' real or personal property, any inconvenience, annoyance or nuisance cause by any such ongoing activities.

**D.** The Developer shall arrange and pay for builder's risk insurance and general liability insurance. The insurance must stay in effect during the entire construction period. Developer must provide the Managing Agent proof of insurance via a certificate of insurance showing the Association as the certificate holder.

**E.** The Developer shall amend this Declaration and the Condominium Map to designate and show any New Improvements. Upon the recordation of such an amendment the New Improvements will be part of the condominium project as though they had been built at the beginning.

**17B.2 Extent of Developer's Reserved Rights to Construct New Improvements.**  
Subject to the above limitations, the Developer shall have the absolute right to do the following :

**A.** To have the exclusive right to control, manage, and conduct the design, development, construction, addition and completion of the New Improvements on the Land even after Developer deeds Apartments to others.

**B.** To remove, change or add common elements or to convert the use of common elements to another purpose.

**C.** To connect the New Improvements to utilities of the Project; and

**D.** To build a fence around the construction area and to have the exclusive use and control of the area enclosed by the fence, and to make all Apartment Owners, their representatives, licensees and invitees stay out of that area until the construction is finished.

**E.** To obtain all permits, licenses, and approvals necessary or convenient to the development, construction, completion and/or operation and use of the Project;

**F.** To coordinate the work and activities of the contractors, subcontractors, architects, engineers, laborers, suppliers, and others to complete the Project in accordance with the Developer's objectives on time, costs and quality;

**G.** To exercise all rights and make all decisions of the "Owner" or the "developer" or similar contracting party (including but not limited to all rights and decisions with respect to litigation and arbitration of claims arising thereunder or in connection therewith, and the compromise thereof) with respect to all contracts now or later signed in connection with the development and construction of the Project.

**H.** To review and approve necessary or desirable changes and requests for changes and change orders with respect to the Project;

**I.** To publish and file the notice of completion in accordance with Section 507-43 of the Hawaii Revised Statutes, as amended;

**J.** To approve and direct the replacement of any New Improvements that are under construction and that are damaged by fire or something else. This includes the right to settle any insurance claims made under any insurance policy that the Developer buys or arranges.

**K.** To amend the Declaration and Condominium Map as necessary or convenient to show the New Improvements.

**L.** To amend any previously recorded deed or other document conveying or encumbering an Apartment so that it conforms with the revised Declaration and/or to record a new deed or conveyance document for that purpose.

**17B.3 Restricted Access to Construction Site.** During the construction period, each Apartment Owner must: (a) remain outside of any fenced construction area; (b) not directly or indirectly do or attempt to do anything that would or could affect or interfere with the development, construction and completion of the New Improvements.

**17C. DEVELOPER'S RESERVED RIGHT TO ADD LAND AND/OR EFFECT MERGER.** Any other provision in this Declaration notwithstanding, the Developer shall have the right (but not the obligation) at its sole discretion under this Section 17C, at any time to add real property to the Project by amending this Declaration, By-Laws, Condominium Map and any other documents that the Developer deems necessary or convenient to effect such addition of real property to the Project. Specifically, the Developer may (but is not obligated to) add the Original Property and the Additional Land as set forth in the Declaration of Intent to Merge. Should Developer add the Original Property and the Additional Land to the Project, the common interest for the Apartments developed in the Merged Area shall be as described in Exhibit "C". If Developer, in its sole discretion, does not subject the Original Property and the Additional Land to this Declaration, then Developer reserves the right to effect either a legal merger or an administrative merger of all or a portion of the Additional Land and the Original Property with the Project pursuant to the terms of the Declaration of Intent to Merge. The new

ownership interest (if done pursuant to a legal merger) or the new maintenance fee/voting allocation (if done pursuant to an administrative merger) shall be as described in Exhibit "C".

**17D. DEVELOPER'S RESERVED RIGHT TO WITHDRAW LAND.** Any other provision in this Declaration notwithstanding, the Developer shall have the right (but not the obligation) at its sole discretion under this Section, at any time to withdraw real property from the Project by amending this Declaration, By-Laws and Condominium Map. Upon such withdrawal as set forth in this Section and with no further action required, no Apartment Owner, mortgagee, lien holder, Apartment purchaser and any other person who may have an interest in the Project or any Apartment (other than the Developer and the holder of any blanket mortgage covering the Land prior to this Declaration) shall have any legal or equitable interest in the withdrawn land. It is the intent of this provision that upon such withdrawal, legal title to the withdrawn land will be vested solely in the Developer. If deemed necessary to effect the intent of this Section, each Apartment Owner, mortgagee, lien holder and any other person who may have an interest in the Project or any Apartment shall, if requested by the Developer, unconditionally quitclaim and/or release its interest, if any, in the withdrawn land to the Developer.

In exercising the foregoing right, the Developer may at any time (i) execute, file and process to final approval an application with the City and County of Honolulu for the legal subdivision of the withdrawn land from the Land covered by this Declaration; (ii) execute and record a petition and any supporting documentation for such subdivision in the Land Court of the State of Hawaii; (iii) execute and record any amendments to this Declaration, the Condominium Map and the By-Laws to note the withdrawal of real property from the Land; and (iv) execute, apply for and obtain from the Real Estate Commission of the State of Hawaii a public report or amendment to public report noting the withdrawal of land from the Project. The withdrawn land shall be deemed deleted from the Project for all purposes upon the recordation in the Bureau of Conveyances of an amendment to this Declaration and the Condominium Map that sets forth the withdrawal of real property.

**17E. DEVELOPER'S RESERVED RIGHT TO SUBDIVIDE AND/OR CONSOLIDATE LAND.** Any other provision in this Declaration notwithstanding, the Developer shall have the right (but not the obligation) at its sole discretion under this Section, at any time to subdivide the Land and/or consolidate the Land with other real property in order to effect the addition or withdrawal of land as described in Sections 17C and 17D by amending this Declaration, By-Laws, Condominium Map and any other document that the Developer deems necessary or convenient to effect such subdivision or consolidation.

**18. RECREATION CENTER.** The Developer plans to develop the Project on the real property described in Exhibit "A", and to then either (a) annex additional real property which has been submitted to the condominium property regimes of Montecito/Tuscany and Montecito/Tuscany II that will be part of the Project, or (b) merge this Project with Montecito/Tuscany and Montecito/Tuscany II. The overall area (this Project and Montecito/Tuscany and Montecito/Tuscany II) is called the "Merged Area". The Developer currently plans to develop the Merged Area as a cohesive, integrated multi-family community. The use and cost of maintaining and operating the shared infrastructure and facilities of the Merged Area will be shared among all owners in the Merged Area on a per unit basis. These plans are subject to change.

**18.1 Future Ownership of the Recreation Center.** The Developer has built a recreation facility on Lot 16021, Map 1252, Land Court Application No. 1069 (the "Recreation Center"). The Developer plans to make the Recreation Center available for use by the Apartment Owners of this Project. The Recreation Center is currently used by the residents of Montecito/Tuscany and Montecito/Tuscany II. The Developer plans to make the Recreation Center available for use by all of residents in the Merged Area. The Developer intends to convey the Recreation Center to the several associations within the Merged Area as tenants in common. Each associations' ownership share of the

Recreation Center conveyed to the associations shall be based upon the associations' proportionate share of the total number of Apartments in the Merged Area. The several associations of apartment owners within the Merged Area shall have the duty and obligation to accept and maintain the Recreation Center at the common expense of all of the owners of apartments within the Merged Area. This duty and obligation may be delegated to a single association of apartment owners should the several associations merge pursuant to Section 17C.

**18.2 Scenario If Future Merger Does Not Include the Entire Merged Area.** If the Developer does not merge certain condominium projects within the Merged Area with this Project pursuant to Section 17C, the association of apartment owners for the merged condominium projects are obligated to allow the occupants of the condominium projects not merged to use the Recreation Center in the same manner and to the same extent as occupants of the merged condominium projects. The condominium projects not merged may be charged a usage fee equal to the condominium project's proportionate share of the costs attributable to the Recreation Center as allocated on a per unit basis.

**18.3 Rights, Easements and Obligations of the Condominium Projects in the Merged Area.** There shall exist the following rights, easements and obligations:

(a) Upon the conveyance of the Recreation Center to the various associations, each Apartment in the Merged Area shall have a non-exclusive right, in common with all other Apartments in any existing or future condominium projects within the Merged Area, to use the Recreation Center and a non-exclusive easement for ingress and egress to and from the Recreation Center over the condominium projects within the Merged Area.

(b) The Developer has completed the development of the Recreation Center prior to the completion of all of the condominium projects within the Merged Area. The Developer has granted to the respective associations of Montecito/Tuscany and Montecito/Tuscany II a license to use the Recreation Center, with the provision that the associations bear the costs of maintaining and operating the facilities of the Recreation Center. This license shall automatically expire upon the conveyance of the fee interest in the Recreation Center to the respective associations in the Merged Area. The Developer reserves the right to grant a similar license to the Association of the Project.

(c) Upon the conveyance of the Recreation Center to the respective associations of apartment owners within the Merged Area, the Developer shall have no further obligation or liability with respect to the development and maintenance of the Recreation Center.

(d) Certain parking stalls in the Project and in other future condominium projects in the Merged Area and in the Recreation Center are visitor parking stalls and may be used by all residents of the Merged Area.

## **19. AMENDMENT OF DECLARATION.**

**19.1 Votes Required to Amend This Declaration.** Except as otherwise provided in this Declaration or in the Act, this Declaration and (if necessary) the Condominium Map may be amended by the affirmative vote or written consent of seventy-five percent (75%) of the Apartment Owners and shall be effective only upon recording in the Office of the Assistant Registrar an instrument setting forth such amendment and vote, duly executed by such Apartment Owners or by the proper officers of the Association. However, at any time prior to recording with the Office of the Assistant Registrar an Apartment deed conveying an Apartment to a party other than Developer, the Developer may amend this Declaration (including the By-Laws, the Condominium Map and other exhibits) in any manner, without the approval, consent or joinder of any Apartment purchaser. Provided further, that this Section 19 and any other provision or section in this Declaration which give the Developer any right,

authority or reservation can be amended only if, in addition to the foregoing vote or written consent of the Apartment Owners, the Developer or its successors or assigns gives written consent to such amendment.

**19.2 Amendments Requiring Developer's and First Mortgages' Consent.**

Notwithstanding the foregoing, in addition to obtaining the necessary votes or consents specified above, proposed amendments to the Declaration that change any of the provisions listed below shall require both the Developer's consent (if done during the Development Period) and the consent of the holders of first mortgages, if any, on Apartments to which are appurtenant fifty-one percent (51%) or more of the common interest: (i) the expansion or contraction of the condominium property regime, or the addition, annexation or withdrawal of property from this regime; (ii) the boundaries of any Apartment; (iii) the undivided interest in the common elements appurtenant to any Apartment; (iv) assessments, assessment liens or the subordination of such liens; (v) the maintenance reserve fund and maintenance and repair of the Project; (vi) the convertibility of Apartments into common elements or of common elements into units; (vii) requirements or restrictions on the leasing of Apartments; or (viii) the rights of the holder or insurers of first mortgages on Apartments in the Project. The foregoing provision does not apply to the Developer when the Developer is exercising any of the Developer's Reserved Rights as specified in this Declaration.

**19.3 Developer's Ability to Amend this Declaration.** Notwithstanding the foregoing and notwithstanding the sale or conveyance of any of the Apartments, the Developer may amend this Declaration (and, when applicable, the Condominium Map) without the approval, consent or joinder of persons then owning the Apartments in order to:

(a) record the "as-built" verified statement (with plans if so applicable) required by Section 514B-34, Hawaii Revised Statutes, as amended, (i) so long as such amendment is a verified statement of a registered architect or professional engineer certifying that the recorded final plans fully and accurately depict the layout, location, Apartment numbers and dimensions of the Apartments as built; or (ii) as long as the plans being filed simultaneously therewith involve only confirmation of buyer's selection of construction options to the layout, location and dimensions of the Apartments as built, or any change in any Apartment number;

(b) update or correct the title description of the Land;

(c) correct any misstatement of fact;

(d) exercise its rights under Developer's Reserved Rights as described in this Declaration;

(e) comply with the law, requirements imposed by the Real Estate Commission of the State of Hawaii and/or requirements of the any institutional lender.

**19.4 Restatement of the Declaration.** The Board, upon resolution duly adopted, shall have the authority as set forth in the Act to restate this Declaration from time to time to set forth any prior amendments thereto, or to amend this Declaration as required to conform with the provisions of the Act or any other statute, ordinance, rule or regulation enacted by any governmental authority.

**20. COMPLIANCE WITH DECLARATION, BY-LAWS AND OTHER RULES.** All Apartment Owners, their successors and assigns, tenants of such Owners, employees of Owners or tenants, and any other persons who may in any manner use any part of the Project are subject to the provisions of the Act and to the provisions of this Declaration, the By-Laws and the Rules and Regulations, and to all agreements, decisions and determinations lawfully made by the Association

according to the voting interests established under the Act, this Declaration and the By-Laws. Failure to comply with any of these documents shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Managing Agent or Board of Directors on behalf of the Association or, in a proper case, by an aggrieved Apartment Owner.

**21. EWA BY GENTRY COMMUNITY ASSOCIATION.** Each Apartment Owner, upon acquiring his or her Apartment, shall automatically become a member of the Ewa by Gentry Community Association, a non-profit Hawaii corporation ("Community Association"), which is separate from the Association of Apartment Owners of MONTECITO/TUSCANY III, and shall remain a member of the Community Association until such time as his ownership of an Apartment ceases. All Apartment Owners and other persons and entities acquiring any right, title or interest in the Project, including contract purchasers, are subject to, bound by, and shall comply strictly with the provisions of the Master Declaration and the Charter of Incorporation and By-Laws of the Community Association, as amended, and all lawful rules and regulations. Pursuant to the Master Declaration, the Community Association is authorized to assess maintenance assessments to cover expenses incurred by the Community Association in providing for the maintenance, restoration and repair of any improvements located on the common areas of the Ewa by Gentry Community Area. All assessments made by the Community Association shall be separate from assessments for this Project.

**22. LATENT DEFECTS.** So long as the Developer or its successors and assigns (other than purchasers of Apartments in the Project) owns one or more of the Apartments, the Developer, for itself and its successors and assigns agrees to take no action which would adversely affect the rights of the Association or Apartment Owners with respect to assurances made by third parties against latent defects in the Project or other rights assigned to the Association, if any, by reason of the establishment of this condominium property regime.

**23. SECURITY.** Neither the Developer nor the Association shall be considered in any way an insurer or guarantor of security within the Project, and each Apartment Owner agrees not to hold the Developer or the Association liable for any loss or damage such Apartment Owner or anyone else may suffer by reason of a failure to provide adequate security or from the ineffectiveness of any security measures undertaken at the Project. Each Apartment Owner assumes the risk of injury, loss or damage that may arise due to a failure to provide adequate security or from the ineffectiveness of any security measures undertaken at the Project. By acquiring an interest in an Apartment in the Project, each Apartment Owner acknowledges and agrees that neither the Developer nor the Association has made any representations or warranties, either express or implied, about any security measures at the Project, and such Apartment Owner has not relied upon any such representations or warranties.

**24. MEDIATION/ARBITRATION OF CERTAIN DISPUTES INVOLVING THE DEVELOPER.** If any dispute or claim arises in connection with the design, development, construction, sale, marketing, financing or any other activity or matter relating to the Project between one or more Apartment Owners and/or the Association on one side and the Developer on the other side (a "Dispute"), the parties agree to first attempt to resolve a dispute by negotiation and then by mediation. If the parties are unable to settle a Dispute, then any unresolved dispute shall be resolved by arbitration before a single arbitrator administered by the Dispute Prevention and Resolution, Inc., or another dispute resolution group acceptable to both parties, and judgment upon the arbitrator's award may be entered in any courts having jurisdiction thereof. If both parties agree, the person serving as mediator may also serve as arbitrator for a Dispute. Each party shall be responsible for the administrative fees incurred by that party, and the arbitrator's and mediator's compensation shall be shared equally by the parties. The prevailing party, if any, shall be entitled to an award of reasonable attorney's fees, and the arbitrator shall be the sole judge in determining the reasonableness of attorney's fees to be awarded and in determining which party is the prevailing party. The parties and the mediator and arbitrator shall keep the content and results of any mediation or arbitration confidential. The

arbitration may not be consolidated with other arbitration proceedings unless all parties agree to such consolidation.

**25. CHANGES IN LAW.** If any law that applies to the Project changes after this Declaration and the Bylaws are recorded, the change in law will control over the provision of this Declaration and the By-Laws only to the extent that said law expressly provides that the changes in law will control over inconsistent provisions in existing condominium documents.

**26. INVALIDITY.** The invalidity of any provision of this Declaration shall not impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included in this Declaration.

**27. WAIVER.** No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**28. RIGHTS OF ACTION.** Nothing in this Declaration or in the By-Laws shall abridge the right of an aggrieved Apartment Owner or the Association to bring and maintain an action against another Apartment Owner or the Association, as the case may be, for failure to comply with the provisions of this Declaration, the By-Laws or any other rules and regulations or decisions of the Association which have been duly made pursuant to authority granted to the Association in said Declaration and By-Laws.

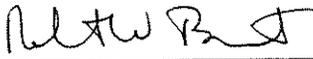
**29. CAPTIONS.** The captions used in this Declaration are used only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision in this Declaration.

*[The rest of this page is deliberately left blank. Section 30 and signature block follow on next page.]*

30. **COMPLIANCE WITH ZONING AND BUILDING ORDINANCES.** The Developer as declarant under this Declaration, hereby declares, subject to the penalties set forth in Section 514B-69(b) of the act that the Project is in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to Section 514B-5.

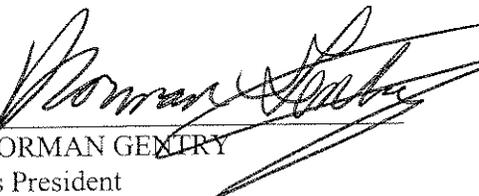
IN WITNESS WHEREOF, the undersigned has executed this Declaration of Condominium Property Regime of MONTECITO/TUSCANY III on August 15, 2006.

GENTRY HOMES, LTD.,  
a Hawaii corporation

By   
Robert W. Brant  
Its President

“Developer”

GENTRY INVESTMENT PROPERTIES  
a Hawaii limited partnership  
By Its General Partner:  
Gentry-Pacific, Ltd.,  
a Hawaii corporation

By   
NORMAN GENTRY  
Its President

“Gentry Investment Properties”

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On August 15, 2006, before me appeared **ROBERT W. BRANT** and **NORMAN GENTRY**, to me personally known, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

  
\_\_\_\_\_  
Sylvia T. Hayashi  
Notary Public, State of Hawaii  
My commission expires October 26, 2007

EXHIBIT "A"

ALL of those certain parcels of land situate at Honouliuli, District of Ewa, Island of Oahu, State of Hawaii, described as follows:

**Lots 1 to 7**, as shown on DPP File No. 2005/Sub-180 (hereinafter sometimes collectively referred to as the "MONTECITO/TUSCANY III Lots")

Being a portion of Lot 16635, as shown on Map 1292, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, deceased.

Being a portion of the land described in Land Court Certificate of Title No. 792,716

**NOTE:** *This Exhibit "A" will be updated once the Land Court version of DPP File No. 2005/Sub-180 has recorded and Gentry Homes, Ltd. has acquired the fee interest in the above referenced lots.*

**TOGETHER WITH** non-exclusive rights of access over, upon and across Easements 1 to 7, inclusive, for access and utility purposes, as shown on DPP File No. 2005/Sub-180, which connects to Roadway Access Lot B-4, as shown on DPP File No. 2005/Sub-180 which connects to Roadway Access Lot 16501, Map 1285 (portion of Keaunui Drive), which connects to Roadway Access Lot 14438, Map 1131 (portion of Keaunui Drive), which connects to Roadway Access Lot 13967 (portion of Keaunui Drive), as shown on Map 1060, which connects to Roadway Access Lot 12026 (portion of Keaunui Drive), as shown on Map 894, which connects to Iroquois Point Road, a public roadway, all of said maps being filed with said Land Court Application No. 1069. Said rights of access to continue until such time as said Roadway Access Lots are dedicated and conveyed to the City and County of Honolulu, State of Hawaii, or other responsible authority as to public roadways.

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Title to all minerals and metallic mines reserved to the State of Hawaii.
2. Restrictions, covenants and conditions as contained in that certain Ewa by Gentry Community Area Declaration of Covenants, Conditions and Restrictions dated July 21, 1988, recorded in said Office of the Assistant Registrar as Document No. 1568352, as amended by instrument dated May 30, 1989, recorded in the Office of said Assistant Registrar as Document No. 1652869, as further amended by instrument dated June 21, 1991, recorded in the Office of the Assistant Registrar as Document No. 1888053, and as may be further amended from time to time. The Project was made subject to the above Declaration of Covenants, Conditions and Restrictions by that certain Declaration of Addition of Real Property dated July 20, 2000 and recorded in said Office of the Assistant Registrar as Document No. 2639394.
3. Declaration of Restrictions dated August 22, 1989, recorded in said Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1661671.
4. Terms and provisions of that certain unrecorded Master Lease with Options to Purchase Real Property, as amended and restated, by and between Gentry Development Company, a Hawaii limited partnership (now known as Gentry Investment Properties) as Lessor/Optionor and Gentry Homes, Ltd., a Hawaii corporation, as Lessee/Optionee, a short form of which was dated March 16, 1995 and recorded in said Office of the Assistant Registrar as Document No. 2234674. Said Option Agreement was amended by that certain Short Form Amendment to Master Lease with Options to Purchase Real Property dated July 26, 2004 but effective September 1, 2002 and

- recorded in said Office of the Assistant Registrar as Document No. 3143734. (*Gentry Homes, Ltd., intends to acquire the property, prior to the recordation of the condominium documents.*)
5. Declaration of Covenants, Conditions and Restrictions on Use and Reservations (Fairways Properties) dated September 30, 2003, recorded in said Office of the Assistant Registrar as Document No. 3002894;
  6. Terms and conditions of that certain Deed and Use Restrictions dated September 30, 2003, recorded in said Office of the Assistant Registrar as Document No. 3002895;
  7. Terms and conditions of that certain Declaration of Confirmation of certain Exceptions, Reservations and Encumbrances Affecting Property (Fairways Properties) dated September 30, 2003 and recorded in the Bureau of Conveyances as Document No. 2003-212181.
  8. Terms and conditions of that certain Notice of Imposition of Conditions by the Land Use Commission dated December 1, 2003 and recorded in the Bureau of Conveyances as Document No. 2003-269381.
  9. Declaration of Land Use Conditions dated February 9, 2004, recorded in said Office of the Assistant Registrar as Document No. 3068154;
  10. Unilateral Agreement and Declaration for Conditional Zoning dated March 16, 2004, recorded in said Office of the Assistant Registrar as Document No. 3084363;
  11. Amended Judgment and Final Order of Condemnation in Civil No. 62550 in the Circuit Court of the First Circuit of the State of Hawaii, dated April 1, 1987 and filed as Document No. 1455569 regarding abutters' rights of access; (*This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-180 (the Montecito/Tuscany III Phase subdivision map).*)
  12. Restriction of Access Rights along Fort Weaver Road as shown on Map 422 of said Land Court Application No. 1069, as set forth by Land Court Order No. 86200, filed on September 11, 1987; (*This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-180 (the Montecito/Tuscany III Phase subdivision map).*)
  13. Easement 1500, for access purposes, as shown on Map 432 of said Land Court Application No. 1069, as set forth by Land Court Order No. 89384, filed on April 25, 1988; (*This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).*)
  14. Access in favor of Lot 4197, as shown on Map 432 of said Land Court Application 1069, over said Easement 1500, as set forth by Land Court Order No. 89384, filed on April 25, 1988; (*This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).*)
  15. Grant of Nonexclusive Easement (Access) in favor of Seibu Hawaii, Inc., a Hawaii corporation, dated December 29, 1988, for access to Ft. Weaver Road appurtenant to said Lot 4197, over and across said Easement 1500, recorded in said Office of the Assistant Registrar as Document No. 1604419; (*This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).*)
  16. Easement 1989, for waterline purposes, as shown on Map 453 of said Land Court Application No. 1069, as set forth by Land Court Order No. 92212, filed on December 30, 1989; (*This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-180 (the Montecito/Tuscany III Phase subdivision map).*)

17. Grant of Non-Exclusive Easement in favor of the City and County of Honolulu for use by the Board of Water Supply, for water and water facilities over and across Easement 1500, dated February 20, 1992, recorded in said Office of the Assistant Registrar as Document No. 1918380; *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
18. Grant of Easement dated March 3, 1994, for water and waterlines over, under, across and through said Easement 1989, recorded in said Office of the Assistant Registrar as Document No. 2237817, in favor of the City and County of Honolulu for use by the Board of Water Supply; *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-180 (the Montecito/Tuscany III Phase subdivision map).)*
19. Declaration of Intent to Merger; Consent dated August 16, 2005, recorded in said Office of the Assistant Registrar as Document Nos. 3314878 and 3314879.
20. **As to said Lots 1, 2, 3, 4 and 5 only:**  
Easement 8786, for drainage purposes, as shown on Map 1285, as set forth by Land Court Order No. 164962, recorded on February 13, 2006.
21. Easement 8789, for drainage purposes, as shown on Map 1285, as set forth by Land Court Order No. 164962, recorded on February 13, 2006; *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
22. Easement 8794, for utility purposes, as shown on Map 1285, as set forth by Land Court Order No. 164962, recorded on February 13, 2006; *(This encumbrance will be deleted upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
23. Easement 8795, for temporary turnaround purposes, as shown on Map 1285, as set forth by Land Court Order No. 164962, recorded on February 13, 2006; *(This encumbrance will be deleted upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
24. Restriction of Vehicular Access Rights as shown on Map 1285 of said Land Court Application 1069, as set forth by Land Court Order No. 164962, recorded on February 13, 2006; *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
25. Easement 8824, for temporary turnaround & utility purposes, as shown on Map 1289, as set forth by Land Court Order No. 165680, recorded on April 7, 2006. *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
26. Easement 8825, for power supply purposes, as shown on Map 1289, as set forth by Land Court Order No. 165680, recorded on April 7, 2006. *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
27. Easement 8826, for switching vault purposes, as shown on Map 1289, as set forth by Land Court Order No. 165680, recorded on April 7, 2006. *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*

28. Easement 8827, for electrical purposes, as shown on Map 1289, as set forth by Land Court Order No. 165680, recorded on April 7, 2006. *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
29. Restriction of Vehicular Access Rights as shown on Map 1289 of said Land Court Application 1069, as set forth by Land Court Order No. 165680, recorded April 7, 2006; *(This encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
30. The designation of the following easements as shown on said Map 1292, as set forth by Land Court Order No. 166158, recorded on May 17, 2006:
  - a. Easement 8862, for temporary turnaround and utility purposes; and
  - b. Easement 8866, for electrical purposes.*(This set of encumbrance will be removed from the MONTECITO/TUSCANY III Lots upon the recordation of DPP File No. 2005/Sub-110 (the Montecito/Tuscany III Bulk subdivision map).)*
31. **As to said Lot 4 only:**  
Easement 8, for electrical and irrigation purposes, as shown on DPP File No. 2005/Sub-110 *(the Montecito/Tuscany III Bulk subdivision map).*
32. **As to said Lot 1 only:**  
Easement 1, for access and utility purposes, as shown on DPP File No. 2005/Sub-180 *(the Montecito/Tuscany III Phase subdivision map).*
33. **As to said Lot 2 only:**  
Easement 2, for access and utility purposes, as shown on DPP File No. 2005/Sub-180 *(the Montecito/Tuscany III Phase subdivision map).*
34. **As to said Lot 3 only:**  
Easement 3, for access and utility purposes, as shown on DPP File No. 2005/Sub-180 *(the Montecito/Tuscany III Phase subdivision map).*
35. **As to said Lot 4 only:**  
Easement 4, for access and utility purposes, as shown on DPP File No. 2005/Sub-180 *(the Montecito/Tuscany III Phase subdivision map).*
36. **As to said Lot 5 only:**  
Easement 5, for access and utility purposes, as shown on DPP File No. 2005/Sub-180 *(the Montecito/Tuscany III Phase subdivision map).*
37. **As to said Lot 6 only:**  
Easement 6, for access and utility purposes, as shown on DPP File No. 2005/Sub-180 *(the Montecito/Tuscany III Phase subdivision map).*
38. **As to said Lot 7 only:**  
Easement 7, for access and utility purposes, as shown on DPP File No. 2005/Sub-180 *(the Montecito/Tuscany III Phase subdivision map).*

39. **As to said Lots 1 and 2 only:**

Easement 8, for irrigation purposes, as shown on DPP File No. 2005/Sub-180 (*the Montecito/Tuscany III Phase subdivision map*).

40. **As to said Lot 4 only:**

Easement 9, for irrigation purposes, as shown on DPP File No. 2005/Sub-180 (*the Montecito/Tuscany III Phase subdivision map*).

41. Agreement for Issuance of Conditional Use Permit Under Section 21-5.380 of the Land Use Ordinance (LUO) dated \_\_\_\_\_ and recorded in said Office of the Assistant Registrar as Document No. \_\_\_\_\_. *Developer will record this document once the Land Court version of DPP File No. 2005/Sub-180 has recorded and Gentry Homes, Ltd. has acquired the fee interest in the above referenced lots.*

END OF EXHIBIT "A"

**EXHIBIT "B"**

**APARTMENT DESCRIPTION**

<b>Apt. No.</b>	<b>Plan Type</b>	<b>Net Living Area (sq. ft.)</b>	<b>Net Covered Entry (sq. ft.)</b>	<b>Net Garage Area (sq. ft.)</b>	<b>Common Interest</b>
1	Tuscany 2 – Plan 3	1,508.73	31.07	367.91	0.862066
2	Tuscany 2 – Plan 4	1,590.31	16.91	193.50	0.862065
3	Tuscany 2 – Plan 5	1,554.85	27.71	442.92	0.8621
4	Tuscany 2 – Plan 5	1,554.85	27.71	442.92	0.8621
5	Tuscany 2 – Plan 4	1,590.31	16.91	193.50	0.862065
6	Tuscany 2 – Plan 3	1,508.73	31.07	367.91	0.862066
7	Tuscany 2 – Plan 2	1,439.00	15.57	396.67	0.862066
8	Tuscany 2 – Plan 3	1,508.73	31.07	367.91	0.862066
9	Tuscany 2 – Plan 4	1,590.31	16.91	193.50	0.862065
10	Tuscany 2 – Plan 2	1,439.00	15.57	396.67	0.862066
11	Tuscany 2 – Plan 3	1,508.73	31.07	367.91	87.068912*
12	Tuscany 2 – Plan 5	1,554.85	27.71	442.92	0.8621
13	Tuscany 2 – Plan 3	1,508.73	31.07	367.91	0.862066
14	Tuscany 2 – Plan 4	1,590.31	16.91	193.50	0.862065
15	Tuscany 2 – Plan 1	1,175.93	23.59	364.83	0.862066
16	Tuscany 2 – Plan 2	1,439.00	15.57	396.67	0.862066

\*The common interest assigned to the Reserved Unit (Apartment 11) will be assigned to future phases as described in Section 17A.2(B).

As nearly as practicable, the common interest for each residential Apartment was determined on a per unit basis. Developer reserves the right to make adjustments so that the total common interest count equals exactly one hundred percent (100%).

**DESCRIPTION OF FLOOR PLANS**

**Tuscany 2, Plan 1 (3 Bedroom, 2 ½ Bath)**

Two story three bedroom, two and one-half bath Apartment with the kitchen, dining room, living room and half bathroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom, a master bathroom, two additional bedrooms and another bathroom. The Apartment also includes an entry porch and a two car garage containing one standard and one compact parking stall. An optional covered lanai built off of the dining and living rooms is depicted on the Option 1 drawings of the Condominium Map. Developer shall indicate when it files the "as-built" verified statement referenced in Section 19.3(a), which Apartments were built with an optional covered lanai. All Apartments have a fenced back yard limited common element. The Apartment has a net living area of approximately 1,175.93 square feet, a net entry porch area of approximately 23.59 square feet and a net garage area of approximately 364.83 square feet.

**Tuscany 2, Plan 2 (4 Bedroom, 2 ½ Bath)**

Two story four bedroom, two and one half bath Apartment with the kitchen, dining room, living room and half bathroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom, a master bathroom, three additional bedrooms and another bathroom. The Apartment also includes an entry porch and a two car garage containing one standard and one compact parking stall. An optional covered lanai built off of the dining and living rooms is depicted on the Option 1 drawings of the Condominium Map. An optional expanded Master Bedroom, which combines the Master Bedroom with

Bedroom No. 2, is depicted on the Option 2 drawings of the Condominium Map. Developer shall indicate when it files the "as-built" verified statement referenced in Section 19.3(a), which Apartments were built with optional floor plans. All Apartments have a fenced back yard limited common element. The Apartment has a net living area of approximately 1,439.00 square feet, a net entry porch area of approximately 15.57 square feet and a net garage area of approximately 396.67 square feet.

**Tuscany 2, Plan 3 (4 Bedroom, 2 ½ Bath)**

Two story four bedroom, two and one half bath Apartment with the kitchen, dining room, living room, laundry room and half bathroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom, a master bathroom, three additional bedrooms and another bathroom. The Apartment also includes an entry porch and a two car garage containing one standard and one compact parking stall. An optional covered lanai built off of the dining and living rooms is depicted on the Option 1 drawings of the Condominium Map. An optional expanded Master Bedroom, which combines the Master Bedroom with Bedroom No. 2, is depicted on the Option 2 drawings of the Condominium Map. Developer shall indicate when it files the "as-built" verified statement referenced in Section 19.3(a), which Apartments were built with optional floor plans. All Apartments have a fenced back yard limited common element. The Apartment has a net living area of approximately 1,508.73 square feet, a net entry porch area of approximately 31.07 square feet and a net garage area of approximately 367.91 square feet.

**Tuscany 2, Plan 4 (5 Bedroom, 3 Bath)**

Two story five bedroom, three bath Apartment with the kitchen, dining room, living room, laundry room, bathroom and a bedroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom, a master bathroom, three additional bedrooms and another bathroom. The Apartment also includes an entry porch and a one car garage containing one compact parking stall. An optional covered lanai built off of the dining and living rooms is depicted on the Option 1 drawings of the Condominium Map. An optional expanded Master Bedroom, which combines the Master Bedroom with Bedroom No. 2, is depicted on the Option 2 drawings of the Condominium Map. Developer shall indicate when it files the "as-built" verified statement referenced in Section 19.3(a), which Apartments were built with optional floor plans. All Apartments have a fenced back yard limited common element, an appurtenant uncovered standard size parking stall located adjacent to the garage. The Apartment has a net living area of approximately 1,590.31 square feet, a net entry porch area of approximately 16.91 square feet and a net garage area of approximately 193.50 square feet.

**Tuscany 2, Plan 5 (4 Bedroom, 2 ½ Bath)**

Two story four bedroom, two and one half bath Apartment with the kitchen, dining room, living room, laundry room and half bathroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom, a master bathroom, three additional bedrooms and another bathroom. The Apartment also includes a two car garage containing one standard and one compact parking stall. An optional covered lanai built off of the dining and living rooms is depicted on the Option 1 drawings of the Condominium Map. A shortened variation of this lanai is depicted on the Option 1A drawings of the Condominium Map. An optional expanded Master Bedroom, which combines the Master Bedroom with Bedroom No. 2, is depicted on the Option 2 drawings of the Condominium Map. Developer shall indicate when it files the "as-built" verified statement referenced in Section 19.3(a), which Apartments were built with optional floor plans. All Apartments have a fenced back yard limited common element. The Apartment has a net living area of approximately 1,554.85 square feet, a net entry porch area of approximately 27.71 square feet and a net garage area of approximately 442.92 square feet.

**The Reserved Unit**

The Apartment is a two story four bedroom, two and one-half bath Apartment with the kitchen, dining room, living room, laundry room and half bathroom on the ground floor, connected by an interior stairway to the second floor which has a master bedroom, a master bathroom, three additional bedrooms and another bathroom. The Apartment also includes an entry porch and a sales office area. The

Apartment has a net floor area of approximately 1,438.73 square feet and the balance of the relative square footage of the living area to be developed in the future phases as provided in Section 17A.2(B) of this Declaration.

**NOTE:** The sizes and configurations of the fenced yard reflected on the Condominium Map are approximations only. Actual sizes and configurations may vary due to the placement and location of utilities and due to varying terrain surrounding each building.

END OF EXHIBIT "B"

**EXHIBIT "C"**

**COMMON INTEREST IF ORIGINAL  
AND ADDITIONAL LAND IS ANNEXED OR MERGED**

**Apartments Located in the Project**

<b>Apt. No.</b>	<b>Plan Type</b>	<b>Common Interest</b>
1	Tuscany 2 – Plan 3	0.28
2	Tuscany 2 – Plan 4	0.28
3	Tuscany 2 – Plan 5	0.28
4	Tuscany 2 – Plan 5	0.28
5	Tuscany 2 – Plan 4	0.28
6	Tuscany 2 – Plan 3	0.28
7	Tuscany 2 – Plan 2	0.28
8	Tuscany 2 – Plan 3	0.28
9	Tuscany 2 – Plan 4	0.28
10	Tuscany 2 – Plan 2	0.28
11	Tuscany 2 – Plan 3	0.28
12	Tuscany 2 – Plan 5	0.28
13	Tuscany 2 – Plan 3	0.28
14	Tuscany 2 – Plan 4	0.28
15	Tuscany 2 – Plan 1	0.28
16	Tuscany 2 – Plan 2	0.28

**Apartments Located on the Original Property  
as created by Document No. 3317144, as amended**

<b>Apt. No.</b>	<b>Plan Type</b>	<b>Common Interest</b>
M-1	Montecito – Plan 2	0.28
M-2	Montecito – Plan 3	0.28
M-3	Montecito – Plan 1	0.28
M-4	Montecito – Plan 3	0.28
M-5	Montecito – Plan 3	0.28
M-6	Montecito – Plan 3	0.28
M-7	Montecito – Plan 4	0.28
M-8	Montecito – Plan 4	0.28
M-9	Montecito – Plan 3	0.28
M-10	Montecito – Plan 2	0.28
M-11	Montecito – Plan 3	0.28
M-12	Montecito – Plan 4	0.28
M-13	Montecito – Plan 4	0.28
M-14	Montecito – Plan 3	0.28
M-15	Montecito – Plan 1	0.28
M-16	Montecito – Plan 3	0.28
M-17	Montecito – Plan 2	0.28
M-18	Montecito – Plan 3	0.28
M-19	Montecito – Plan 3	0.28
M-20	Montecito – Plan 3	0.28
M-21	Montecito – Plan 3	0.28
M-22	Montecito – Plan 2	0.28

Apt. No.	Plan Type	Common Interest
M-23	Montecito – Plan 3	0.28
M-24	Montecito – Plan 4	0.28
M-25	Montecito – Plan 4	0.28
M-26	Montecito – Plan 3	0.28
M-27	Montecito – Plan 1	0.28
M-28	Montecito – Plan 3	0.28
M-29	Montecito – Plan 2	0.28
M-30	Montecito – Plan 3	0.28
M-31	Montecito – Plan 3	0.28
M-32	Montecito – Plan 2	0.28
M-33	Montecito – Plan 3	0.28
M-34	Montecito – Plan 1	0.28
M-35	Montecito – Plan 3	0.28
M-36	Montecito – Plan 2	0.28
M-37	Montecito – Plan 3	0.28
M-38	Montecito – Plan 1	0.28
M-39	Montecito – Plan 3	0.28
M-40	Montecito – Plan 3	0.28
M-41	Montecito – Plan 3	0.28
M-42	Montecito – Plan 3	0.28
M-43	Montecito – Plan 4	0.28
M-44	Montecito – Plan 4	0.28
M-45	Montecito – Plan 3	0.28
M-46	Montecito – Plan 2	0.28
M-47	Montecito – Plan 3	0.28
M-48	Montecito – Plan 3	0.28
M-49	Montecito – Plan 4	0.28
M-50	Montecito – Plan 2	0.28
M-51	Montecito – Plan 3	0.28
M-52	Montecito – Plan 3	0.28
M-53	Montecito – Plan 4	0.28
M-54	Montecito – Plan 4	0.28
M-55	Montecito – Plan 3	0.28
M-56	Montecito – Plan 1	0.28
M-57	Montecito – Plan 3	0.28
M-58	Montecito – Plan 3	0.28
M-59	Montecito – Plan 2	0.28
M-60	Montecito – Plan 3	0.28
M-61	Montecito – Plan 3	0.28
T-1	Tuscany – Plan 3	0.2832
T-2	Tuscany – Plan 2	0.2832
T-3	Tuscany – Plan 4	0.2832
T-4	Tuscany – Plan 3	0.2832
T-5	Tuscany – Plan 1	0.2832
T-6	Tuscany – Plan 2	0.2832
T-7	Tuscany – Plan 4	0.2832
T-8	Tuscany – Plan 3	0.2832
T-9	Tuscany – Plan 1	0.2832
T-10	Tuscany – Plan 3	0.2832
T-11	Tuscany – Plan 3	0.2832
T-12	Tuscany – Plan 2	0.2832

Apt. No.	Plan Type	Common Interest
T-13	Tuscany – Plan 3	0.2832
T-14	Tuscany – Plan 1	0.2832
T-15	Tuscany – Plan 3	0.2832
T-16	Tuscany – Plan 2	0.2832
T-17	Tuscany – Plan 3	0.2832
T-18	Tuscany – Plan 4	0.2832
T-19	Tuscany – Plan 2	0.2832
T-20	Tuscany – Plan 5	0.2832
T-21	Tuscany – Plan 5	0.2832
T-22	Tuscany – Plan 2	0.2832
T-23	Tuscany – Plan 4	0.2832
T-24	Tuscany – Plan 3	0.2832
T-25	Tuscany – Plan 5	0.2832
T-26	Tuscany – Plan 5	0.2832
T-27	Tuscany – Plan 3	0.2832
T-28	Tuscany – Plan 4	0.2832
T-29	Tuscany – Plan 2	0.2832
T-30	Tuscany – Plan 3	0.2832
T-31	Tuscany – Plan 4	0.2832
T-32	Tuscany – Plan 2	0.2832
T-33	Tuscany – Plan 3	0.2832
T-34	Tuscany – Plan 2	0.2832
T-35	Tuscany – Plan 1	0.2832
T-36	Tuscany – Plan 4	0.2832
T-37	Tuscany – Plan 3	0.2832
T-38	Tuscany – Plan 2	0.2832
T-39	Tuscany – Plan 1	0.2832
T-40	Tuscany – Plan 4	0.2832
T-41	Tuscany – Plan 3	0.2832
T-42	Tuscany – Plan 4	0.2832
T-43	Tuscany – Plan 3	0.2832
T-44	Tuscany – Plan 4	0.2832
T-45	Tuscany – Plan 2	0.2832
T-46	Tuscany – Plan 3	0.2832
T-47	Tuscany – Plan 4	0.2832
T-48	Tuscany – Plan 2	0.2832
T-49	Tuscany – Plan 3	0.2832
T-50	Tuscany – Plan 5	0.2832
T-51	Tuscany – Plan 5	0.2832
T-52	Tuscany – Plan 1	0.2832
T-53	Tuscany – Plan 4	0.2832
T-54	Tuscany – Plan 3	0.2832
T-135	Tuscany – Plan 1	28.2832*
T-136	Tuscany – Plan 2	0.2832
T-137	Tuscany – Plan 3	0.2832
T-138	Tuscany – Plan 4	0.2832
T-139	Tuscany – Plan 5	0.2832
M-140	Montecito – Plan 1	0.28
M-141	Montecito – Plan 2	0.28
M-142	Montecito – Plan 3	0.28
M-143	Montecito – Plan 4	0.28

**Apartments Located on the Additional Property  
as created by Document No. 3339428, as amended**

<b>Apt. No.</b>	<b>Plan Type</b>	<b>Common Interest</b>
M-62	Montecito – Plan 3	0.28
M-63	Montecito – Plan 1	0.28
M-64	Montecito – Plan 3	0.28
M-65	Montecito – Plan 4	0.28
M-66	Montecito – Plan 4	0.28
M-67	Montecito – Plan 3	0.28
M-68	Montecito – Plan 2	0.28
M-69	Montecito – Plan 1	0.28
M-70	Montecito – Plan 3	0.28
M-71	Montecito – Plan 4	0.28
M-72	Montecito – Plan 4	0.28
M-73	Montecito – Plan 1	0.28
M-74	Montecito – Plan 3	0.28
M-75	Montecito – Plan 3	0.28
M-76	Montecito – Plan 3	0.28
M-77	Montecito – Plan 2	0.28
M-78	Montecito – Plan 3	0.28
M-79	Montecito – Plan 3	0.28
M-80	Montecito – Plan 3	0.28
M-81	Montecito – Plan 3	0.28
M-82	Montecito – Plan 3	0.28
M-83	Montecito – Plan 2	0.28
M-84	Montecito – Plan 3	0.28
M-85	Montecito – Plan 2	0.28
M-86	Montecito – Plan 3	0.28
M-87	Montecito – Plan 4	0.28
M-88	Montecito – Plan 4	0.28
M-89	Montecito – Plan 3	0.28
M-90	Montecito – Plan 1	0.28
M-91	Montecito – Plan 3	0.28
M-92	Montecito – Plan 2	0.28
M-93	Montecito – Plan 3	0.28
M-94	Montecito – Plan 3	0.28
M-95	Montecito – Plan 3	0.28
M-96	Montecito – Plan 2	0.28
M-97	Montecito – Plan 3	0.28
M-98	Montecito – Plan 1	0.28
M-99	Montecito – Plan 3	0.28
M-100	Montecito – Plan 2	0.28
M-101	Montecito – Plan 3	0.28
M-102	Montecito – Plan 3	0.28
M-103	Montecito – Plan 3	0.28
M-104	Montecito – Plan 3	0.28
M-105	Montecito – Plan 2	0.28
M-106	Montecito – Plan 3	0.28
M-107	Montecito – Plan 3	0.28
M-108	Montecito – Plan 3	0.28
M-109	Montecito – Plan 3	0.28

M-110	Montecito – Plan 2	0.28
M-111	Montecito – Plan 1	0.28
M-112	Montecito – Plan 3	0.28
M-113	Montecito – Plan 4	0.28
M-114	Montecito – Plan 4	0.28
M-115	Montecito – Plan 3	0.28
M-116	Montecito – Plan 2	0.28
M-117	Montecito – Plan 1	0.28
M-118	Montecito – Plan 3	0.28
M-119	Montecito – Plan 4	0.28
M-120	Montecito – Plan 4	0.28
M-121	Montecito – Plan 3	0.28
M-122	Montecito – Plan 2	0.28
M-123	Montecito – Plan 3	0.28
M-124	Montecito – Plan 3	0.28
M-125	Montecito – Plan 4	0.28
M-126	Montecito – Plan 4	0.28
M-127	Montecito – Plan 1	0.28
M-128	Montecito – Plan 3	0.28
M-129	Montecito – Plan 2	0.28
M-130	Montecito – Plan 3	0.28
M-131	Montecito – Plan 3	0.28
M-132	Montecito – Plan 3	0.28
M-133	Montecito – Plan 3	0.28
M-134	Montecito – Plan 3	0.28
T-55	Tuscany – Plan 2	0.2832
T-56	Tuscany – Plan 3	0.2832
T-57	Tuscany – Plan 4	0.2832
T-58	Tuscany – Plan 5	0.2832
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T-71	Tuscany – Plan 4	0.2832
T-72	Tuscany – Plan 2	0.2832
T-73	Tuscany – Plan 3	0.2832
T-74	Tuscany – Plan 2	0.2832
T-75	Tuscany – Plan 4	0.2832
T-76	Tuscany – Plan 1	0.28
T-77	Tuscany – Plan 3	0.2832
T-78	Tuscany – Plan 2	0.2832
T-79	Tuscany – Plan 4	0.2832
T-80	Tuscany – Plan 3	0.2832
T-81	Tuscany – Plan 3	0.2832

T-82	Tuscany – Plan 2	0.2832
T-83	Tuscany – Plan 4	0.2832
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T-86	Tuscany – Plan 2	0.2832
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T-92	Tuscany – Plan 3	0.2832
T-93	Tuscany – Plan 4	0.2832
T-94	Tuscany – Plan 3	0.2832
T-95	Tuscany – Plan 1	0.28
T-96	Tuscany – Plan 3	0.2832
T-97	Tuscany – Plan 2	0.2832

\*The common interest assigned to Apartment T-135 will be assigned to future phases as described in Section 17A.2(B) of that certain Declaration of Condominium Property Regime of Montecito/Tuscany recorded as Document No. 3317144.

As nearly as practicable, the common interest for each residential Apartment was determined on a per unit basis. Developer reserves the right to make adjustments so that the total common interest count equals exactly one hundred percent (100%).

EXHIBIT "L"

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Return by Mail ( ) Pickup (X) To:  
ATTENTION: MARGUERITE DAYSOG ITC NO. 215417  
GENTRY HOMES, LTD.  
560 N. Nimitz Highway, Suite 210 TOTAL NO. OF DOCUMENT PAGES: 56  
Honolulu, Hawaii 96817

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Document Title: BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF MONTECITO/TUSCANY III

Developer: GENTRY HOMES, LTD.

Property Description: LOTS 1 to 7, DPP File No. 2005/Sub-180  
LAND COURT APPLICATION NO. 1069  
CT NO. 792,716

**NOTE:** *Gentry Homes, Ltd. intends to update the Lot and Map references and any applicable encumbrances as soon as the Land Court version of DPP File No. 2005/Sub-180 records.*

*Gentry Homes, Ltd. will also acquire the fee interest in and to the above specified lots at that time.*

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TMK No. (1) 9-1-010:007 (portion)

**BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS  
OF MONTECITO/TUSCANY III**

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**BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF  
MONTECITO/TUSCANY III**

1. GENTRY HOMES, LTD., a Hawaii corporation, whose principal place of business and post office address is 560 North Nimitz Highway, Honolulu, Hawaii 96817 (the "Developer") is the master lessee of that certain real property described in the attached Exhibit "A" pursuant to the terms of that certain Short Form Amended and Restated Master Lease with Options to Purchase Real Property recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2234674. Said Short Form Amended and Restated Master Lease was amended by that certain Short Form Amendment to Master Lease with Options to Purchase Real Property recorded as Document No. 3143734 in said Office of the Assistant Registrar. Said Documents 2234674 and 3143734 are hereinafter collectively referred to as the "Master Lease".

2. GENTRY INVESTMENT PROPERTIES, a Hawaii limited partnership ("Gentry Investment Properties") owns in fee simple that certain real property described in the attached Exhibit "A". Gentry Investment Properties is the master lessor under the Master Lease. As the master lessor under the Master Lease, Gentry Investment Properties is willing to consent to the establishment of the Declaration referenced below and these By-Laws strictly as an accommodation to the Developer to allow Developer to exercise its rights under the Master Lease. Developer is the sole party responsible for the development of the Project (as defined in Section 1(v) of the Declaration), and Gentry Investment Properties shall have no obligations of the Developer under this Declaration. It is the intent of both Gentry Investment Properties and the Developer that Developer acquire the fee interest in the real property described in Exhibit "A" prior to any conveyance to individual apartment owners.

3. The Developer has undertaken to improve the real property described in Exhibit "A" by constructing residential buildings and other improvements upon it as described in that certain Declaration of Condominium Property Regime of MONTECITO/TUSCANY III dated \_\_\_\_\_ and recorded in said Office of the Assistant Registrar as Document No. \_\_\_\_\_ (the "Declaration") referred to below and in accordance with plans recorded as Condominium Map No. \_\_\_\_\_.

3. The Developer has established that certain condominium project known as MONTECITO/TUSCANY III by recording the Declaration.

NOW, THEREFORE, the Developer does hereby declare that the following By-Laws shall constitute covenants running with the land and the apartments constructed upon it and shall be binding upon all parties having or acquiring any right, title or interest in the land or the apartments.

**ARTICLE I  
INTRODUCTORY PROVISIONS**

**SECTION 1. Definitions.** The terms used in these By-Laws shall have the same meaning as defined in the Declaration unless the context clear indicates otherwise.

**SECTION 2. Conflicts.** These By-Laws are set forth to comply with the requirements of the Act. In case any of these By-Laws conflict with the Act or the Declaration, the provisions of the Act or the Declaration, as the case may be, shall control.

**SECTION 3. Application.** All present and future Owners, lessees, mortgagees, purchasers under agreements of sale, tenants and occupants of apartments and their guests, patrons, customers and employees and other business invitees, and any other persons who may use any part of the Project in any manner are subject to these By-Laws, the Declaration and the Rules and Regulations. The acceptance of an apartment deed or other conveyance, the rental of any of the apartments, or the mere act of occupying an apartment shall constitute an agreement that these By-Laws, the Rules and Regulations, and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified and will be complied with.

## **ARTICLE II ASSOCIATION OF OWNERS**

**SECTION 1. Membership.** All Apartment Owners of the Project shall constitute the Association of Apartment Owners. Each Owner, upon acquiring title to any apartment, shall automatically become a member of the Association and shall remain a member until his ownership of such apartment ceases. Notwithstanding anything to the contrary provided herein, the Developer shall be entitled to vote and/or act on all matters as the Association and the Board of Directors until the first conveyance of an apartment of the Project has taken place. Thereafter, the Developer, as the owner of any unsold apartments, shall be entitled to vote the interest of each such apartment.

### **SECTION 2. Meetings of the Association.**

(a) **First Meeting.** The Developer shall call, or instruct and authorize the Managing Agent to call, the first annual meeting of the Apartment Owners, and give Apartment Owners thirty (30) days' prior written notice of the date. The meeting shall be held not later than one hundred eighty (180) days after recording of the first apartment conveyance, provided forty percent (40%) or more of the Project has been sold and recorded. The term "sold and recorded" means the sale of an apartment and the recording of the apartment deed. If forty percent (40%) of the Project is not sold and recorded at the end of one (1) year, an annual meeting shall be called upon the written request of ten percent (10%) of the Apartment Owners. At such meeting, the Apartment Owners shall elect a Board. Prior to that time, the Association shall consist solely of the Developer, which shall have authority to act in all matters as the Association and as its Board.

(b) **Annual Meetings.** The annual meetings of the Association shall be held within ninety (90) days following the close of the fiscal year of the Association or at such other time as the Board shall from time to time determine. At such meetings, the Board shall be elected by ballot of the Apartment Owners according to the requirements of Article III, Section 1 [Number and Qualification]. The Apartment Owners may transact such other business at such meetings as may properly come before them.

(c) **Place of Meetings.** All meetings of the Association shall be held at the address of the Project or elsewhere within the State of Hawaii as determined by the Board.

(d) **Special Meetings.** Special meetings of the Association may be held at any time upon the call of the President, the Developer during the Development Period, or any three (3) Directors, or upon the written request of not less than twenty-five percent (25%) of the Owners, and the business considered shall be limited to that stated in the notice of the special meeting, unless eighty percent (80%) of the Owners present, in person or by proxy, decide otherwise. Upon receipt of such call or petition, the secretary shall send written notice of the meeting to all Apartment Owners and the meeting shall be held at the time specified in such call or petition, or if the time is unspecified then within thirty (30) days of the receipt of the call or petition at any reasonable time. The meeting shall be held at the Project, unless some other suitable place within the State of Hawaii is designated by the Board. If a merger of this Project has occurred as provided for in the Declaration, a special meeting of all the Apartment Owners in the Merged Area shall be called within sixty (60) days of the merger for the purposes of electing a new Board of Directors to govern the entire Project.

(e) **Adjournment of Meetings.** If any meeting of the Association cannot be held because a quorum has not attended, a majority of the Apartment Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called. Any meeting of the Association may be adjourned from time to time not less than forty-eight (48) hours from the time the original meeting was called as may be determined by majority vote of the Apartment Owners present, whether or not a quorum is still present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

**SECTION 3. Notice of Meetings and Other Notices.** Written notice of all meetings, annual or special, shall be given by personally delivering or by mailing such notice, postage prepaid, at least fourteen (14) days but not more than thirty (30) days before the date assigned for the meeting, to the Owners of the apartments at their addresses at the Project or at the addresses given to the Board for the purpose of service of such notices. All notices shall state the place, date and hour of the meeting; whether it is annual or special; the items on the agenda for such meeting and the business proposed to be transacted at the meeting and shall contain a standard proxy form authorized by the Association, if any, and any other notices permitted or required to be delivered by these By-Laws. Upon written request for notices delivered to the Board, the holder of any duly recorded mortgage or deed of trust from any Owner of an apartment may obtain a copy of any and all notices permitted or required to be given to the Owner whose interest is subject to such mortgage or deed of trust. Upon notice being given according to these provisions, the failure of any Owner or mortgagee of an apartment to receive actual notice of the meeting shall not in any way invalidate the meeting or proceedings at the meeting. The presence of any Apartment Owner or mortgagee in person or by proxy at any meeting shall be deemed a waiver of any required notice to such Owner unless he objects at the opening of the meeting to the holding of such meeting because of the failure to give notice in

accordance with these provisions. Each Owner shall keep the Board informed of any changes in address.

**SECTION 4. Powers of the Association.** The following powers shall be vested in the Association, and shall be exercised according to the provisions of these By-Laws:

- (a) The election of a Board of Directors.
- (b) The administration and operation of the Project, payment of common expenses and determination and collection of common expenses.
- (c) The establishment and collection from the Apartment Owners of their shares of the common expenses.
- (d) The designation and removal of personnel necessary for the maintenance, repair and replacement of the common elements.
- (e) The adoption of rules and regulations governing the details of operation and use of the common elements, subject to approval by Developer during the Development Period, which approval shall not be unreasonably be withheld or delayed.
- (f) The establishment of such restrictions and requirements consistent with the Declaration or the Act regarding the use and maintenance of the apartments and the use of the common elements.
- (g) The amendment of these By-Laws according to the Declaration and subject to Section 514B-108 of the Act, as amended.
- (h) The creation and appointment of committees.
- (i) The making of arrangements for the management of the Project pursuant to an agreement containing provisions relating to the duties, obligations, removal and compensation of the Managing Agent, subject to approval by Developer during the Development Period, which approval shall not be unreasonably be withheld or delayed.

Nothing in this Section 4 shall prohibit the delegation by the Association of any of its powers according to these By-Laws, as amended.

**SECTION 5. Other Powers.** In addition to the powers enumerated in Article II, Section 4 [Powers of the Association] above and in addition to the powers granted by any other provision in these By-Laws, the Association may exercise any and all powers consistent with any law or the Declaration, which are reasonably incident to the fulfillment of the purposes of the Condominium Property Regime set forth in the Declaration, or are reasonably incident to the exercise of its powers as set forth in the Declaration or these By-Laws.

**SECTION 6. Voting.** Voting shall be on a percent basis and the percent of the vote to which each Owner is entitled is as set forth in the Declaration. Votes allocated to any area which constitutes a common element under Section 514B-3 of the Act shall not be cast at any Association meeting, whether or not it is so designated in the Declaration. Votes may be cast

in person or by proxy by the respective Apartment Owners. An administrator, personal representative, guardian or trustee may vote in person or by proxy at any meeting of the Association the vote for any apartment owned or controlled by him in such capacity, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such apartment in such capacity. The vote for any apartment owned by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and, in case of protest, each co-tenant shall be entitled to only a share of such vote in proportion to his share of ownership in such apartment.

**SECTION 7. Quorum.** Except as otherwise provided in these By-Laws, the presence in person or by proxy of Apartment Owners having at least fifty percent (50%) of the total authorized votes of all apartments shall constitute a quorum at all meetings of the Association.

**SECTION 8. Majority Vote.** The vote of a majority of Apartment Owners at a meeting at which a quorum is present shall be binding upon all Apartment Owners for all purposes unless the Declaration, these By-Laws or the Act requires a higher percent.

**SECTION 9. Proxies and Pledges.**

(a) The authority given by any Apartment Owner to another person to represent him at meetings of the Association shall be in writing and shall state the name of the Association, the date of the meeting, the printed name of the person giving the proxy, the number of the apartment or apartments for which the proxy is given, the name of the person or entity to whom the proxy is given and the date the proxy is given. The proxy shall also contain check boxes where the Apartment Owner shall indicate whether the proxy is given:

- (i) for quorum purposes only;
- (ii) to the individual whose name is printed on a line next to the check box;
- (iii) to the Board of Directors as a whole and that the vote may be made on the basis of the consensus of the majority of the Board of Directors;
- (iv) to the members of the Board of Directors present at the meeting and that the vote shall be distributed equally amongst such members.

A proxy form which does not have a check box marked, shall be considered a proxy for quorum purposes only. Proxies may also be limited as the Apartment Owner desires and indicates. The proxy shall be signed by such Owner and recorded with the Secretary or Managing Agent no later than 4:30 p.m. on the second business day prior to any such meeting and shall be valid unless revoked by a written instrument recorded with the Secretary or by the death or incapacity of such Owner or by the attendance of such Owner at the meeting. Any proxy given on a proxy form which accompanies a notice of meeting shall be valid for the meeting to which the notice pertains and its adjournment only. No proxy shall be irrevocable unless coupled with a financial interest in the unit.

(b) Any Apartment Owner shall be permitted to view proxies, tally sheets, ballots, Owners' check-in lists, and the certificate of election for a period of thirty (30) days following any Association meeting; provided that:

- (i) The Board may require the Apartment Owner to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or its members or both; and
- (ii) The Apartment Owner pay for administrative costs attributable to the Apartment Owner's request if such request requires in excess of eight (8) hours of the Association's or Managing Agent's time to fulfill the request.

Proxies and ballots may be destroyed following the aforesaid thirty (30)-day period. Copies of tally sheets, Owners' check-in lists, and the certificates of election from the most recent Association meeting shall be provided to any Apartment Owner upon request by the Apartment Owner, provided that the Owner pay a reasonable fee for duplicating, postage, stationery and other administrative costs associated with handling the request.

(c) Voting rights transferred or pledged by mortgage, deed of trust, or agreement of sale of any interest in an apartment, a true copy of which is recorded with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is recorded with the Board. Any one of two or more persons owning any apartment may give or revoke a proxy for the entire vote of such apartment or if so specified in the proxy, for a share of such vote in proportion to the share of ownership of the person or persons giving such proxy. Any proxy given by a co-tenant or co-tenants for only a share of an apartment's vote in proportion to the share of ownership of such co-tenant or co-tenants shall be revocable only by such co-tenant or co-tenants. Any proxy given by a co-tenant or co-tenants for only a share of an apartment's vote may be exercised to cast the entire vote for such apartment in the absence of protest by another co-tenant or the holder of a proxy from another co-tenant. In case of such protest, each co-tenant or holder of a proxy from a co-tenant, as the case may be, shall be entitled to only a share of such apartment's vote in proportion to the respective shares of ownership in such apartment.

(d) Notwithstanding anything in this Section or these By-Laws, no officer of the Board shall use Association funds to solicit proxies, nor shall any Managing Agent solicit, for use by such Managing Agent, any proxies from any Apartment Owner, nor shall he cast any proxy vote at any Association meeting except for the purpose of establishing a quorum. No member of a Board of Directors who uses Association funds to solicit proxies, shall cast any proxy votes for the election or reelection of Board members at any Association meeting unless the proxy form specifically authorizes the Board member to vote for the election or reelection of Board directors and the Board shall have first posted notice of its intent to solicit such proxies in prominent locations within the Project at least twenty-one (21) days prior to its solicitation. If within seven (7) days of posting notice the Board receives a request from any Apartment Owner to use Association funds to solicit proxies, accompanied by a statement not in excess of one

hundred (100) words indicating qualifications to serve on the Board and/or reasons for soliciting proxies, the Board shall mail to all Apartment Owners a proxy form which either (A) contains the names of Apartment Owners who have requested the use of Association funds for soliciting proxies and their statements; or (B) contains no names, but is accompanied by a list of all Apartment Owners who have requested the use of Association funds for soliciting proxies and their statements. If the Board fails to mail a proper proxy form to all Apartment Owners after having received a timely request to use Association funds to solicit proxies, no proxy received by a Board member shall be valid to authorize such Board member to vote for the election or reelection of Directors notwithstanding the fact that the proxy contains specific authorization to do so.

**SECTION 10. Conduct of Meetings and Order of Business.** All meetings of the Association shall be conducted according to the most current edition of Robert's Rules of Order. The order of business at all meetings of the Association shall be as follows:

- (a) Roll call;
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Report of Board;
- (f) Reports of committees;
- (g) Election of inspectors of election (when required);
- (h) Election of members of the Board (when required);
- (i) Unfinished business; and
- (j) New business.

**SECTION 11. List of Members.** The Managing Agent, as referred to in Article II, Section 4 [Powers of the Association], or the Board, shall keep an accurate and current list of members of the Association and their current addresses and the names and addresses of the vendees under agreements of sale, if any, covering any apartment, and lessees, if any, under a lease providing that the lessee shall be deemed to be the Owner of the apartment. The list shall be maintained at a place designated by the Board and a copy shall be made available, at cost, to any Owner who furnishes to the Managing Agent, or the Board a duly executed and acknowledged affidavit stating that the list (a) will be used by such Owner personally and only for the purpose of soliciting proxies or providing information to other Owners with respect to Association matters, and (b) will not be used by such Owner or furnished to anyone else for any other purpose. Every Apartment Owner shall pay to the Association or the Managing Agent on demand a service charge, in a reasonable amount fixed from time to time by the Board of Directors, for the registration on the records of the Association of any change of ownership of an apartment. Initially, the service charge shall be \$15.00.

**SECTION 12. Minutes of Meetings.** The minutes of the meetings of the Association of Apartment Owners for the current and prior year shall be available for

examination by Apartment Owners at convenient hours at a place designated by the Board. Copies of Association meeting minutes shall be provided to any Apartment Owner upon the Owner's request, provided that the Apartment Owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

**SECTION 13. Committees.** The Association may create and appoint such general or special committees as the affairs of the Association may require and may define the authority and duties of such committees.

**SECTION 14. Control of Association.** Notwithstanding anything herein provided to the contrary, the Developer shall relinquish all special rights, expressed or implied, through which the Developer may directly or indirectly control, direct, modify or veto any action of the Association, the Board or a majority of Apartment Owners. Control of the Association shall pass to the owners of apartments within the Project other than Developer not later than the earlier of the following:

(a) Sixty (60) days after conveyance of seventy-five percent (75%) of the common interest appurtenant to Apartments that may be created to Apartment Owners other than the Developer or affiliate of the Developer;

(b) Two (2) years after the Developer has ceased to offer Apartments for sale in the ordinary course of business;

(c) Two (2) years after any right to add new units was last exercised; or

(d) The day the Developer, after giving written notice to the Apartment Owners, records an instrument voluntarily surrendering all rights to control activities of the Association.

**SECTION 15. Selling or Renting Apartments.** The Association employees shall not be in the business of selling or renting apartments in the Project except Association-owned units or personally owned units, if any, unless such activity is approved by an affirmative vote of sixty-seven percent (67%) of the Apartment Owners.

**SECTION 16. Registration with Real Estate Commission.** The Association shall be registered annually with the Real Estate Commission. Registration shall include proof of fidelity bond coverage for all persons handling Association funds; names and titles of persons handling such funds; name of Managing Agent; post office address of the Project; and name, address and phone number of the designated contact person for the Association.

### **ARTICLE III BOARD OF DIRECTORS**

**SECTION 1. Number and Qualification.** The affairs of the Association shall be governed by a Board of Directors. The Board shall be composed of at least five (5) persons. If, however, the number of apartments in the Project exceeds one hundred (100) after a new phase is added to the Project, or as a result of any merger pursuant to Section 17C of the

Declaration, then the number of directors will increase to nine (9). However, the number of directors may be reduced if at least sixty-seven percent (67%) of the Apartment Owners vote by mail or at a special or annual meeting to amend these By-Laws to reduce the minimum number of directors. All directors shall be Owners, Co-Owners or vendees under an agreement of sale or an officer or agent of any corporate owner of an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be the Owners of an apartment owned by their partnership for the purposes of this Section. No Managing Agent of the Project shall serve on the Board, and there shall not be more than one representative on the Board from any one apartment.

**SECTION 2. Election and Term of Office.** At the first annual meeting of the Association, two (2) Directors shall be elected for a term of one (1) year, two (2) Directors shall be elected for a term of two (2) years, and one (1) Director shall be elected for a term of three (3) years. At the expiration of the term of office of each Director, his successor shall be elected to serve a term of three (3) years, subject to removal as provided below. In case of delay in the election of a successor, each member of the Board shall continue to exercise the powers and duties of the office until his successor is elected by the Apartment Owners and shall qualify to serve as a Director. In the event of a merger of this Project as provided in the Declaration, there shall be a special election of Directors for the Association for the project as then constituted upon such merger.

**SECTION 3. Election of Directors.** Election of Directors shall be by cumulative voting, and each apartment may cast for any one or more nominees to the Board a vote equivalent to the common interest for the apartment multiplied by the number of Directors to be elected. Each Owner shall be entitled to cumulate his vote and give all to one nominee or to distribute his vote in such manner as he shall determine among any or all of the nominees. The nominees receiving the highest number of votes as calculated in the manner described above, up to the total number of Directors to be elected, shall be elected.

**SECTION 4. Removal of Directors.** At any regular or special meeting of Apartment Owners, any one or more of the members of the Board may be removed with or without cause by a majority of the Apartment Owners and a successor shall then be elected for the remainder of the term to fill the vacancy. The call for a special meeting to remove a Director and elect a successor shall be by the President or by a petition to the Secretary or the Managing Agent signed by not less than twenty-five percent (25%) of the Apartment Owners. If the Secretary or Managing Agent does not send out the notices for such special meeting within fourteen (14) days after the receipt of a petition, the petitioners shall send out the notices for the special meeting. Any member of the Board whose removal is proposed by the Apartment Owners shall be given an opportunity to be heard at the meeting. In addition, if any Director fails to attend four (4) consecutive regular meetings of the Board for any reason, the Board by a vote of a majority of the other members may remove him and select a replacement to serve the remainder of his term.

**SECTION 5. Vacancies.** Vacancies in the Board caused by any reason other than by the natural expiration of the term of any director, or the removal of a director by a vote of the Apartment Owners, shall be filled by a vote of a majority of the remaining Board members at

a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected shall be a Board member until a successor is elected at the next annual meeting of the Apartment Owners. Any successor so elected shall be a member only for the unexpired remainder of the term of the member replaced. Death, incapacity or resignation of any Director, or his ceasing to be or be deemed an Owner of an apartment, shall cause his office to become vacant.

## **SECTION 6. Meetings of the Board of Directors.**

(a) **Annual Meetings.** The first meeting of the new Board following the annual meeting of the Association shall be held at the place of and immediately following each annual meeting of the Association, and no notice shall be necessary to the newly elected members of the Board in order to legally constitute such meeting, provided a majority of the whole Board shall be present at the meeting. At each meeting, the Board shall elect the officers of the Association for the ensuing year. Notice of the annual Board meeting shall be given in a reasonable manner at least fourteen (14) days, if practicable, prior to such meeting and may be included with any notice of the annual meeting of the Association.

(b) **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the members of the Board, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board shall be given to each member of the Board personally or by mail, telephone, e-mail or facsimile at least three (3) business days prior to the day named for such meeting.

(c) **Special Meetings.** Special meetings of the Board may be called by the President on three (3) business days' notice to each member of the Board given personally or by mail, telephone or telegraph, which shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary in a like manner and on like notice by the written request of at least two (2) members of the Board. Notwithstanding anything in these By-Laws to the contrary, the Developer, when acting as the Board as provided in Article II, Section 2 [Meetings of the Association], may act without a formal meeting and without call or notice.

(d) **Meetings Generally.** Notice of all Board meetings shall be posted by the resident manager or a member of the Board in prominent locations within the Project seventy-two (72) hours prior to the meeting, or simultaneously with notice to the Board. All meetings of the Board other than executive sessions, shall be open to all Owners, and Owners who are not on the Board may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board votes otherwise. With the approval of a majority of a quorum of its members, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters or litigation in which the Association is or may become involved. The nature of any and all business to be considered in executive session shall first be announced in open session.

(e) **Telephone Meetings.** Subject to the notice requirements contained in these By-Laws, members of the Board of Directors or any committee designated thereby may participate in a meeting of such Board or committee by means of a conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

**SECTION 7. Powers and Duties.** The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things except such as by law, the Declaration or these By-Laws may not be delegated to the Board by the Apartment Owners. Each Director shall owe the Association a fiduciary duty in the performance of his responsibilities. Each Board member shall familiarize himself with the condominium documentation for the Project. The powers and duties of the Board shall include, but shall not be limited to, the following:

(a) Enforcement of the provisions of the Declaration, these By-Laws, the Rules and Regulations, the Act and regulations promulgated by the Real Estate Commission, including establishing rules, penalties and fines to be used in enforcement of the Declaration, By-Laws and the Rules and Regulations;

(b) Operation, care, upkeep, maintenance and repair of the common elements and any additions or alterations thereto;

(c) Preparation of an annual budget of the common expenses required for the affairs of the Association (including without limitation, the operation and maintenance of the Project) and determination of the amounts of monthly and special assessments;

(d) Maintenance of custody and control of all funds of the Association, maintenance of full and accurate books of account and records of such funds and preparation of regular financial reports thereof;

(e) Levy and collection of monthly and special assessments of the common expenses and other charges payable by the Apartment Owners;

(f) Employment and dismissal of the personnel necessary for the maintenance, operation, repair and replacement of the common elements;

(g) Conducting (or directing another responsible party to conduct) background checks on applicants applying for employment as security guards or managers or for a position which would allow such employees access to the keys of or entry into the Apartments or access to Association funds, provided that applicants sign an authorization to conduct such background checks;

(h) Adoption and amendment of the Rules and Regulations covering the details of the operation and use of the Project;

(i) Opening bank accounts on behalf of the Association of Apartment Owners and designating the signatories required for the accounts;

(j) Subject to any approval requirements and spending limits contained herein or in the Declaration, the Board may authorize the borrowing of money to be used by the Association for the repair, replacement, maintenance, operation, or administration of the common elements of the Project, or the making of any additions, alterations and improvements thereto. The cost of such borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to such borrowing, shall be a common expense of the Project. A majority of the Owners must give written consent to such borrowing, having been first notified of the purpose and use of the funds;

(k) Obtaining insurance for the Project, including the apartments;

(l) Making additions and improvements to or alterations of the Project and repairs to and restoration of the Project according to the other provisions of these By-Laws after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;

(m) Procuring legal and accounting services necessary or proper for the operation of the Project or the interpretation, enforcement or implementation of these By-Laws, the Act and any other material documents affecting the Project;

(n) Purchasing any other materials, supplies, furniture, labor and services, making repairs and structural alterations, and payment of all insurance premiums, taxes and assessments and other common expenses which the Board is required to secure, make or pay pursuant to these By-Laws or the Act or which in its opinion shall be necessary or proper for the operation of the buildings as apartment buildings or the enforcement of these By-Laws, provided that if any such materials, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes or assessments are required because of the particular actions or negligence of the Owners of particular apartments, the cost thereof shall be specially assessed to the Owners of such apartments;

(o) Reviewing all requests made by homeowners for alterations or additions to apartments for aesthetic and structural impact and approving or disapproving such requests.

(p) Enter into contracts for goods or services provided that any contract having a term of more than one (1) year shall provide that it may be terminated by either party thereto at the end of the first year or at any time thereafter upon not less than sixty (60) days written notice without cause or payment of a termination fee, except that the contract providing for management services, should such contract be for a period in excess of one (1) year, shall provide that either party thereto may terminate the contract at any time without cause or payment of a termination fee by giving the other party at least thirty (30) days prior written notice of its intention to so terminate the contract;

(q) Purchase, maintain and replace any equipment and provision of all water and utility services required for the common elements;

(r) Conduct regular, periodic inspections of all common areas and limited common elements to determine if any owner is affecting the structural (as determined by an independent consultant retained by the Board) or aesthetic integrity of the Project. The Board has the authority to require owners who are affecting the Project in such a manner to cease such action or to take any remedial action or enforcement measures as authorized by these By-Laws;

(s) Payment of any amount necessary to discharge any lien or encumbrance levied against all or a part of the entire Project which may in the opinion of the Board constitute a lien against the Project or against the common elements or limited common elements rather than merely against the interest of particular Owners. If one or more Owners are responsible for the existence of any such lien, they shall be jointly and severally liable for the cost of discharging it, including the costs incurred by the Association as a result of such lien;

(t) Enter into any apartment and any limited common element from time to time during reasonable hours as may be necessary for making emergency repairs to prevent damage to the common elements or to another apartment or apartments. Access to each apartment for normal maintenance must be at reasonable times and upon prior consent of the Apartment Owner;

(u) Maintenance and repair of any apartment if such maintenance or repair is necessary, in the discretion of the Board, to protect the common elements and limited common elements or any other portion of the buildings, and the Owner or Owners of said apartment fail or refuse to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair is delivered by the Board to said Owner or Owners. The Board shall levy a special assessment against such apartment for the cost of such maintenance or repair and any attorneys' fees and other expenses incurred in levying and collecting such special assessment;

(v) Purchasing or leasing or otherwise acquiring any apartment in the name of the Board of Directors or its nominee, corporate or otherwise, on behalf of all Apartment Owners. The Board may not purchase an apartment and hold the same, or lease an apartment for a period in excess of one (1) year, without obtaining the approval of at least fifty percent (50%) of the Apartment Owners;

(w) Purchasing apartments at foreclosure or other judicial sales in the name of the Board or its nominee, corporate or otherwise, on behalf of all Apartment Owners;

(x) Delegation of its powers to committees, agents, officers, representatives and employees;

(y) Giving to all persons having any interest in any apartment according to the Association's record of ownership or book of mortgages on apartments, notice of delinquency exceeding thirty (30) days in the payment of any assessment against such apartment;

**(z)** Giving to all institutional holders of first mortgages on apartments, as identified in the Association's record of ownership or book of mortgages on apartments, written notice of any loss to or taking of the common elements of the Project if such loss or taking exceeds TEN THOUSAND DOLLARS (\$10,000.00) in value. In the event of a merger pursuant to Section 16C [Developer's Reserved Right to Add Land And/Or Effect Merger] of the Declaration, the TEN THOUSAND DOLLARS (\$10,000.00) amount shall be per merged condominium community;

**(aa)** Giving to the institutional holder of any first mortgage on any apartment, as identified in the Association's record of ownership or book of mortgages on apartments, written notice of the failure of the Apartment Owner and/or lessee of the apartment to comply fully (within thirty (30) days after written demand by the Association) with any provision of the Declaration, these By-Laws, the Rules and Regulations or any other agreements, decisions and determinations of the Association lawfully made from time to time; and giving to such mortgagee written notice of any loss to such apartment which exceeds ONE THOUSAND DOLLARS (\$1,000.00);

**(bb)** Appointing a Managing Agent and delegating to them such of its powers as it deems necessary or appropriate pursuant to the Declaration or these By-Laws. Provided, however, that the Board must first obtain the approval of a majority of apartment owners by way of a vote at an annual or special meeting before it can make a decision not to renew the contract of the Managing Agent;

**(cc)** Appointing committees consisting of members and directors and delegating to them such of its powers as is necessary and appropriate to effectively manage the Association, subject, however, to the oversight by the Board.

**(dd)** Enforcement of such penalties and fines as established hereunder for violations of the provisions of the Declaration, these By-Laws, the Rules and Regulations, the Act or the rules of the Real Estate Commission including penalties and fines for failure or refusal to pay to the Association on demand all costs and expenses required to be paid hereunder, provided such penalties and fines are not inconsistent with the law or these By-Laws. The unpaid amount of such penalties and fines against any Apartment Owner shall constitute a lien against his interest in his apartment which may be foreclosed upon by the Board of Directors or Managing Agent according to these By-Laws and the Act. The lien for such penalties and fines shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the apartment and to all sums unpaid on mortgages of record;

**(ee)** Upon the request of any Apartment Owner, institutional lender or holder or insurer of a first mortgage on an apartment or any prospective purchaser of an apartment, making available for inspection during normal business hours or other reasonable circumstances current copies of the Declaration, By-Laws and other rules governing the Project and the books, records and financial statements of the Association, including the most recent annual audited financial statement;

(ff) Leasing out any apartments acquired by the Association (as provided in subsection (u) above), provided the prior approval of a majority of the members of the Association is obtained;

(gg) Granting an easement across the common elements for any “reasonable purpose”, as the term is herein used, which term shall include, but shall not be limited to, those purposes which are necessary to the operation, care, upkeep, maintenance and repair of any apartment, the common elements or any limited common elements. The grant of the easement by the Board shall not be withheld unreasonably;

(hh) Expending Association funds for necessary travel, directors' fees and per diem on behalf of the Board members, provided that Apartment Owners are informed in advance and the expenses are approved by a majority of the Apartment Owners; and

(ii) Disposing of personal property abandoned on the common elements of the Project in any one of the following ways:

- (i) By selling the personal property in a commercially reasonable manner;
- (ii) Storing such personal property at the expense of its owner;
- (iii) Donating such personal property to a charitable organization; or
- (iv) Otherwise disposing of such personal property; provided that no such sale, storage, or donation shall occur until sixty (60) days after the Board complies with the following:
  - (a) The Board notifies the Owner in writing of:
    - (1) The identity and location of the personal property; and
    - (2) The Board's intent to sell, store, donate, or dispose of it. Notification shall be by certified mail, return receipt requested, to the Owner's address as shown by the records of the Association, or to an address designated by the Owner for the purpose of notification; or, if neither of these is available, to the Owner's last known address, if any; or

(b) If the identity or address of the Owner is unknown, the Board shall first advertise the sale, donation, or disposition at least once in a daily newspaper of general circulation within the City and County of Honolulu.

The proceeds of any sale or disposition of personal property as set forth above shall, after deduction of any accrued costs of mailing, advertising, storage, and sale, be held for the Owner for thirty (30) days, after which any proceeds not claimed shall become the property of the Association.

Notwithstanding anything to the contrary contained in these By-Laws, the Board shall have no power to impair the use and enjoyment of an apartment or the limited common elements appurtenant thereto in a manner inconsistent with the Declaration or these By-Laws.

#### **SECTION 8. Budgets and Reserves.**

(a) The Board shall prepare and adopt an annual operating budget and distribute it to the Apartment Owners. At a minimum, the budget shall include the following:

- (i) The estimated revenues and operating expenses of the Association;
- (ii) Information as to whether the budget has been prepared on a cash or accrual basis;
- (iii) The total replacement reserves of the Association as of the date of the budget;
- (iv) The estimated replacement reserves the Association will require to maintain the Project based on a reserve study performed by the Association;
- (v) A general explanation of how the estimated replacement reserves are computed; and
- (vi) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves.

(b) Effective as of the fiscal year which begins after the Association's first annual meeting, the Association shall collect a minimum of fifty percent (50%) of the full amount required to fund the estimated replacement reserves for that fiscal year. However, the Association may fund in phases, over three years, estimated replacement reserves which have been substantially depleted by an emergency.

(c) The Association shall compute the estimated replacement reserves by a formula which is based on the estimated life and the estimated capital expenditure required for major maintenance expense of each part of the Project. The estimated replacement reserves shall include:

- (i) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and
- (ii) Separate, designated reserves for each part of the Project for which capital expenditures or major maintenance will exceed \$10,000. Parts of the Project for which capital expenditures or major maintenance will not exceed \$10,000 may be aggregated in a single designated reserve.

(d) No Association or Apartment Owner, director, officer, Managing Agent, or employee of the Association who makes a good faith effort to calculate the estimated replacement reserves for the Association shall be liable if the estimate subsequently proves incorrect.

(e) The Board may not exceed its total adopted annual operating budget by more than twenty percent (20%) during the fiscal year to which the budget relates, except in emergency situations. Prior to the imposition or collection of an assessment under this Section, the Board may pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(f) This Section shall override any other requirements contained in these By-Laws, the Declaration and any other Association documents relating to preparation of budgets, calculations of reserve requirements, assessments or funding of reserves, with the exception of:

- (i) provisions relating to the repair and maintenance of the Project;
- (ii) any requirements in the Declaration, these By-Laws or any other Association documents which require the Association to collect more than fifty percent (50%) of reserve requirements; or
- (iii) any provisions relating to upgrading the common elements, such as additions, improvements and alterations to the common elements.

(g) Pursuant to the Act and all regulations relating to it, an Owner may enforce compliance by the Board if the Association fails to comply with the above.

**(h) Definitions.**

- (i) “Capital expenditures” means an expense which results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset which extends the life of an existing asset for a period greater than one year.
- (ii) “Emergency situation” means any of the following:
  - (a) An extraordinary expense required by an order of a court;
  - (b) An extraordinary expense necessary to repair or maintain any part of the Project for which the

Association is responsible where a threat to personal safety on the Project is discovered; or

- (c) An extraordinary expense necessary to repair any part of the Project for which the Association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget.
- (iii) "Major maintenance" means an expenditure for maintenance or repair which will result in extending the life of an asset for a period greater than one year.
- (iv) "Replacement reserves" means funds for the upkeep, repair, or replacement of those parts of the Project including, but not limited to roofs, walls, decks, paving, and equipment, which the Association is obligated to maintain.

**SECTION 9. Employment of Managing Agent.** Except as herein otherwise provided with respect to the initial Managing Agent, the Board of Directors shall at all times employ a responsible Hawaii corporation as Managing Agent duly registered with the Real Estate Commission of the State of Hawaii as required by Section 514B-132 of the Act to manage and control the Project, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated by the Board. The Managing Agent shall comply with all requirements of Section 514B-132 of the Act.

(a) **Contract to Employ Managing Agent; Termination.** The compensation of the Managing Agent shall be specified by the Board. Notwithstanding Section 7(p), Any contract to employ a managing agent shall provide that it may be terminated by either party thereto with or without cause or payment of a termination fee on thirty (30) days' written notice, and in no event may such employment contract be for a term exceeding one (1) year. No decision by the Association to terminate professional corporate management of the Project may be made without the prior written consent of at least seventy-five percent (75%) of the institutional holders of first mortgages on apartments (based upon one vote for each such first mortgage).

(b) **Board's Delegation of Duties to Managing Agent.** The Board shall have the right to delegate to the Managing Agent such powers and duties as may be necessary or proper in connection with (a) supervision of the immediate management and operation of the Project, (b) maintenance, repair, replacement and restoration of the common elements and any addition or alteration thereto, (c) the purchase, maintenance and replacement of any equipment, (d) provision for service of all utilities to the buildings and the various apartments, (e) employment, supervision and dismissal of such personnel as it deems necessary for the maintenance and operation of the Project, (f) conclusion of contracts with others for the furnishing of such services as it deems proper for the Project, (g) preparation of a proposed budget and schedule of assessments, (h) collection of all assessments and payment of all bills, (i) purchase of such insurance as is contemplated by these By-Laws, (j) custody and control of all

funds, (k) maintenance of books and records on a cash basis and (l) preparation of financial reports.

The Board may in its discretion limit any of the powers granted to the Managing Agent in this Deed or may grant additional powers to the Managing Agent.

(c) **Fidelity Bond.** If the Managing Agent is delegated the responsibility for custody, control and administration of Association funds, the Managing Agent shall be required to maintain fidelity bond coverage for its officers, employees and agents having such responsibility. Any such fidelity bond shall: (a) name the Association as an obligee; (b) be in compliance with Chapter 514B-132 of the Act; (c) contain a waiver by the issuer of all defenses based upon an exclusion from the definition of "employee" or similar term or expression of any person who serves without compensation; and (d) provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association. Such fidelity bonds shall be maintainable at the Managing Agent's expense and shall be in addition to any bonds maintained by the Association for the same or similar purpose covering the directors, officers, trustees, employees and volunteers of the Association.

Upon written request of any Apartment Owner or his mortgagee, the Managing Agent shall deliver a written statement of the status of the account of such Apartment Owner.

(d) **Class Actions.** The President of the Association or Managing Agent, subject to the direction of the Board of Directors, shall represent the Association or any two or more Apartment Owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements or more than one apartment, and on its or their behalf may institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings, without prejudice to the rights of any Apartment Owner individually to appear, sue or be sued.

**SECTION 10. Examination of Minutes.** Minutes of meetings of the Board for the current and prior year shall be available for examination by Apartment Owners at convenient hours at a place designated by the Board. Minutes of Board meetings shall include the recorded vote of each Board member on all motions except motions voted on in executive session. Copies of Board meeting minutes shall be provided to any Owner upon the Owner's request, provided that the Owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

**SECTION 11. Waiver of Notice.** Any member of the Board may at any time waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the timely receipt of such notice. Attendance by a member of the Board at any meeting of the Board shall constitute a waiver of notice by him of the meeting's time and place. If all the members of the Board are present at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

**SECTION 12. Rules of Order.** All meetings of the Board shall be conducted in accordance with the most current edition of Robert's Rules of Order.

**SECTION 13. Quorum of Board.** At all meetings of the Board, a majority of the members thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board present at a meeting at which a quorum is present shall constitute the decision of the Board. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**SECTION 14. Fidelity Bonds.** The Board shall obtain adequate fidelity bonds covering all directors, officers, trustees, employees and volunteers responsible for handling funds belonging to or administered by the Association, naming the Association as the obligee and providing coverage in an amount not less than one and one half times the estimated annual operating expenses and reserves of the Association, or the minimum amount required under the Act, whichever is greater. The premiums on such bonds shall constitute a common expense and every such bond shall:

(a) Provide that the bond(s) may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least thirty (30) days' prior written notice to the Board, the first mortgagees and every other person in interest who shall have requested such notice; and

(b) Contain a waiver of any defense based upon the exclusion of persons who serve without compensation from any definition of the term "employee" or similar terms, and, by appropriate endorsement, provide coverage for any such persons not otherwise covered.

**SECTION 15. Compensation.** No member of the Board shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses reasonably incurred in the course of acting as a Director.

**SECTION 16. No Proxy Vote.** Directors shall not cast any proxy vote at any Board meeting.

**SECTION 17. Liability and Indemnity of the Board of Directors.** The members of the Board and officers shall not be liable to the Apartment Owners for any mistake of judgment or otherwise except for their own gross negligence or willful misconduct. The Association shall indemnify each Director and officer of the Association against all costs, expenses and liabilities, including judgments, amounts paid in compromise settlements and amounts paid for reasonable attorney's fees and other related expenses which may be incurred by or imposed on him in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted or threatened in which he may be involved as a party or otherwise by reason of his being or having been such Director or officer, or by reason of any past or future action taken, authorized or approved by him or any omission to act as such Director or officer, whether or not he continues to be such Director or officer at the time such costs, expenses or liabilities are incurred or imposed. This shall not include costs, expenses or liabilities related to matters which he is finally adjudged to be liable by reason of his gross negligence or willful misconduct toward the Association in performing his duties as such Director or officer. In

determining whether a Director or officer is liable by reason of gross negligence or willful misconduct toward the Association in performing his duties in the absence of a final adjudication of the existence or nonexistence of such liability, the Board and each Director or officer may conclusively rely upon an opinion of legal counsel selected by the Board. The foregoing right of indemnification shall not be exclusive of other rights which any Director or officer may have and shall inure to the benefit of the heirs, personal representatives, successors, successors in trust and assigns of each Director or officer.

**SECTION 18. Conflict of Interest.** A member of the Board of Directors shall not vote at any meeting of the Board of Directors on any issue in which he has a conflict of interest. A Director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue and the minutes of the meeting shall record the fact that a disclosure was made. If there is any disagreement as to whether or not a conflict of interest exists as to a particular Director or Directors, the determination shall be made by a majority of the non-interested Directors, whose decision shall be conclusive and binding on all parties.

**SECTION 19. Documents Provided to Board.** The Association shall provide, at its expense, all Board members with current copies of the Declaration, these By-Laws, House Rules, and, annually, a copy of the Act with amendments.

#### **ARTICLE IV OFFICERS**

**SECTION 1. Designation.** The principal officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be Owners, co-owners, or vendees under an agreement of sale or an officer or agent of any corporate owner of an apartment. The partners in a general partnership and the general partners of a limited partnership shall be deemed to be owners of an apartment owned by their partnership for the purposes of this Section, all of whom shall be appointed by the Board. The Board may appoint such other officers as in its judgment may be necessary. The President and Vice President shall, but no other officers need be, members of the Board. No officer of the Association shall also be employed by the managing agent of the Association.

**SECTION 2. Election of Officers.** The officers of the Association shall be elected annually by the Board at the annual meeting of each new Board and shall hold office at the pleasure of the Board.

**SECTION 3. Removal of Officers.** Upon the affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

**SECTION 4. President.** The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and the Board. He shall have all of the general powers and duties which are incident to the office of President of a corporation

organized under the laws of the State of Hawaii, including, but not limited to, the power to appoint committees from among the Apartment Owners from time to time as he may in his discretion decide to be appropriate to assist in the conduct of the affairs of the Association. He shall also have such other powers and duties as may be provided by these By-Laws or assigned to him from time to time by the Board.

**SECTION 5. Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President is absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to act temporarily in the place of the President. The Vice President shall also have such other powers and duties as shall be assigned to him from time to time by the Board or by the President.

**SECTION 6. Secretary.** The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors, give all notices as provided by these By-Laws, maintain and keep a continuous and accurate record of ownership of all apartments, have charge of such books, documents and records of the Association as the Board may direct; keep the minute book where resolutions shall be recorded; and he shall, in general, perform all the duties incident to the office of Secretary of a corporation organized under the laws of the State of Hawaii. The duties of the Secretary may be delegated to the Managing Agent; provided, however, that the responsibility for the performance of the duties delegated shall remain with the Secretary.

**SECTION 7. Treasurer.** The Treasurer shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for preparing all required financial data and reports. He shall be responsible for depositing all moneys and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board; and he shall, in general, perform all the duties incident to the office of Treasurer of a corporation organized under the laws of the State of Hawaii. The duties of the Treasurer may be delegated to the Managing Agent; provided, however, that the responsibility for the performance of the duties delegated shall remain with the Treasurer.

**SECTION 8. Agreements, Contracts, Deeds, Checks and Other Instruments.** All agreements, contracts, deeds, leases, checks and other instruments of the Association, including any amendments to the Declaration, Condominium Map and/or By-Laws, shall be executed by any two of the President, Vice President, Secretary or Treasurer, or by such other person or persons (including the Managing Agent) as may be designated by the Board.

**SECTION 9. Compensation of Officers.** Except as specifically authorized by the Association at a regular or special meeting, no officer shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the course of acting as an officer.

**ARTICLE V**  
**USE, MAINTENANCE AND ALTERATION OF PROJECT**

**SECTION 1. Maintenance and Repair of Apartments.** Except as otherwise provided by law or the Declaration, each Apartment Owner shall, at his own expense, keep the apartment and all fixtures and equipment therein in good order, condition and repair and do such repainting and redecorating as may be necessary to maintain the good appearance and condition of his apartment. Each Owner shall be responsible for the maintenance, repair and replacement of the apartment, including but not limited to all doors, windows, window fixtures and all internal installations within the apartment such as water, electricity, gas (if any), telephone, sanitation, lights and all other fixtures and accessories belonging to such apartment, if any, and all foundations, walls, floors, ceilings and roofs of such apartment with all necessary reparations and amendments whatsoever in good order and condition. Each owner shall also be responsible for maintaining the parking areas, concrete driveways, fenced yards and other limited common elements appurtenant to his apartment. Each Apartment Owner shall perform promptly all repair and maintenance work to his apartment, the omission of which would adversely affect any common element or any other apartment, and shall be responsible for all loss and damage caused if he fails to do so.

**SECTION 2. Maintenance and Repair of Common Elements.** All maintenance, repairs and replacements of the common elements (other than limited common elements), whether located inside or outside of the apartment, shall be made only by or at the direction of the Board and be charged to all the Owners as a common expense. The costs of maintenance, repairs and replacements caused by the negligence, misuse or neglect of an identified Apartment Owner shall be charged to such Apartment Owner as a special assessment establishing a lien on such Owner's apartment in accordance with Article VI, Section 4 [Default in Payment of Assessments]. Additionally, all costs of maintenance, repair, replacement, additions and improvements to any limited common element shall be charged to the Owners of the apartments to which such limited common element is appurtenant as a special assessment constituting a lien of such Owner's apartment in accordance with Article VI, Section 4.

**SECTION 3. Use of Project.**

- (a) The apartments of the Project shall be used only for such purposes as set forth in the Declaration.
- (b) All common elements of the Project shall be used only for their respective purposes as designed, subject to:
  - (i) The right of the Board, upon the approval of seventy-five percent (75%) of the Owners, to change the use of the common elements (other than any limited common elements);
  - (ii) The right of the Board, on behalf of the Association, to lease or otherwise use for the benefit of the Association those common elements which are not actually used by any

of the Owners for an originally intended special purpose, as determined by the Board; provided that unless the approval of seventy-five percent (75%) of the Owners is obtained, any such lease shall not have a term exceeding five (5) years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty (60) days' written notice;

- (iii) The right of the Board to lease or otherwise use for the benefit of the Association those common elements not falling within subsection (ii) above, upon obtaining (A) the approval of seventy-five percent (75%) of the Owners, which includes all directly affected Owners and all Owners to which such common elements are appurtenant in the case of limited common elements, and (B) approval of all mortgagees of record on apartments with respect to which Owner approval is required by (A) above, if such lease or use would be in derogation of the interest of such mortgagees.

(c) It is intended that the exterior of the buildings shall present a uniform appearance. The Board may therefore require the painting, staining, refinishing or repair of outside doors, windows, trim, fences, railings and other exterior portions of the buildings and regulate the type and color of paint to be used. The Board is authorized to contract and pay for such painting, staining, refinishing and repair out of the capital improvements fund, subject to direct charges for negligence, misuse or neglect, as provided above. No awnings, shades, jalousies or other device shall be erected or placed on any portion of the apartment so as to be visible from the exterior without prior written permission from the Board. No portion of the Project may be used for openly storing material or displaying signs of any kind.

(d) No Apartment Owner or occupant shall without the written approval of the Board of Directors install any wiring for electrical or telephone installations, machines or air-conditioning units or other equipment fixtures, appliances or appurtenances whatsoever on the exterior of the Project or protruding through the wall, windows or roof.

(e) Nothing shall be allowed, done or kept in any apartment or common element of the Project which would overload or impair the floors, walls or roofs, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association, unless the Owner of said apartment shall agree to pay any such increases or obtain substitute insurance.

#### **SECTION 4. Alteration of Project.**

(a) Additions, alterations, repairs or improvements to the common or limited common elements of the Project may be made only by or at the direction of the Board. No Owner may make, except with the prior written permission of the Board, any alteration, addition, repair or improvement (i) to his apartment which may affect the common elements or change the

exterior appearance of the buildings, or (ii) to any of the common elements including, without limitation, common or limited common elements within, encompassing or adjacent to his apartment. This provision shall not, however, impair or otherwise affect the Developer's right to exercise any of the Developer's Reserved Rights, as set forth in the Declaration.

(b) Whenever in the judgment of the Board, the common or limited common elements shall require additions, alterations, repairs or improvements with a total cost of less than TEN THOUSAND DOLLARS (\$10,000.00), the Board may proceed with such additions, alterations, repairs or improvements and shall assess the cost thereof as a common expense, except that the cost of any such work performed on any limited common elements may be charged to the Owners of apartments to which such limited common elements are appurtenant. Any additions, alterations, repairs or improvements costing in excess of TEN THOUSAND DOLLARS (\$10,000.00) may be made by the Board only after obtaining approval of a majority of the Owners. Such approval shall not be required for any additions, alterations, repairs or improvements required by law or in the event of an emergency threatening immediate and substantial damage to person or property. If such approval is obtained, the cost shall constitute part of the common expense.

Upon merger of this Project, as provided for in Section 16C of the Declaration, the \$10,000.00 limit mentioned above shall be automatically increased to Twenty Five Thousand and No/100 Dollars (\$25,000.00).

**SECTION 5. Certain Work Prohibited.** Anything herein to the contrary notwithstanding, no Apartment Owner shall do any work which could jeopardize the soundness or safety of the Project, reduce its value, impair any easement or hereditament, nor may any Apartment Owner add any material structure or excavate any basement or cellar without in every such case the prior consent of seventy-five percent (75%) of the Apartment Owners, and a hundred percent (100%) of all Apartment Owners whose apartments or appurtenant limited common elements are directly affected.

**SECTION 6. State and Federal Fair Housing Act.** None of the above provisions are intended to contravene the State or Federal Fair Housing Act. The Board will at all times comply with the provisions of the Fair Housing Act when acting upon requests by handicapped persons to make reasonable modifications to the common areas to allow full enjoyment of the Project. Costs of such alterations shall be borne by the requesting residents. The Board shall also comply with the Fair Housing Act when acting upon requests by handicapped persons for exemptions from any of the provisions of the Project Documents which may interfere with said handicapped persons' equal opportunity to use or enjoy their apartments and the common elements of the Project.

**SECTION 7. Insurance - Casualty and Liability.**

(a) Pursuant to Section 514B-143 of the Act, the Board, on behalf of the Association, at its common expense, shall purchase and maintain property insurance covering all buildings, structures, improvements and fixtures of this Project, including all apartments and the common elements and, whether or not part of the common elements, all exterior and interior

walls, exterior glass, floors and ceilings, common personal property and supplies of the Association and any fixtures, appliances, equipment or other property originally installed within any apartment (whether or not the same is a common element or owned by the Association). The property insurance shall insure against damage, destruction or loss by fire and other perils covered by an ISO Commercial Property "Special" Causes of Loss Form or its equivalent with an Agreed Amount Endorsement written on a Replacement Cost basis and an Increased Cost of Construction endorsement. If the Land is located in an identified flood hazard area as designated by the Federal Emergency Management Agency, the Association shall purchase flood insurance in an amount required by mortgage lenders. Coverage shall be for full replacement cost at time of loss. The policy shall be issued by a responsible insurance company authorized to do business in Hawaii and shall be for the use and benefit of each Apartment Owner, and payable in case of loss to such bank or trust company authorized to do business in Hawaii as the Board shall designate as trustee for each Apartment Owner and its mortgagee, if any, for custody and disposition as herein provided of all proceeds of such insurance, without prejudice to the right of each Apartment Owner to insure his or her apartment for his or her own benefit. Except as provided in Section 13 of the Declaration [Insured Casualty and Uninsured Casualty], in every case of such loss or damage, all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the Project's original plans and elevations or such modified plans conforming to laws and ordinances then in effect as shall be first approved as herein provided. The Association at its common expense shall make up any deficiency in such insurance proceeds. Every such policy of insurance shall (unless unobtainable at reasonable cost):

- (i) Provide that the liability of the insurer shall not be affected by, and that the insurer shall not claim any right of, set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Apartment Owner;
- (ii) Contain no provision relieving the insurer from liability for loss occurring while hazard to any building is increased (whether or not within the knowledge or control of the Board) because of any breach of warranty or condition or any other act or neglect by the Board or any Apartment Owner or any other persons under either of them (the Board will, however, give notice to the insurers of an increased hazard as soon as practical);
- (iii) Provide that the policy may not lapse, be canceled or reduced by amount or type of coverage (whether or not requested by the Board) except by the insurer giving at least sixty (60) days prior written notice to the Board, any mortgagee, and any other person in interest who shall have requested such notice from the insurer;

- (iv) Contain a waiver by the insurer of any right of subrogation to any right of the Board or any Apartment Owner against any of them or any other persons under them;
- (v) Contain a waiver by the insurer of any right to deny liability because of vacancy of fewer than 85% of the apartments;
- (vi) Contain a provision requiring the insurer, at the commencement of the policy and on each anniversary date, to provide the Board with a written summary in layman's terms of the policy. The summary shall include the type of policy, a description of the coverage and limits, amount of annual premium, and renewal dates. The Board shall provide this information to each Apartment Owner.
- (vii) Contain a standard mortgagee clause with special condominium endorsement which shall:
  - (a) provide that any reference to a mortgagee in the policy shall include all holders of mortgages of any apartment in the project whether or not named in the policy;
  - (b) provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board or any Apartment Owner or any persons under any of them;
  - (c) waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause; and
  - (d) provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by the Board.

(b) The Board, on behalf of and at the common expense of the Association, shall purchase and maintain commercial general liability insurance written on an occurrence form, including coverage for premises and operation, independent contractors, products and completed operations, and personal and advertising injury. The policy shall cover all Apartment Owners with respect to the Project and the Association, the Developer (during the Development Period), and the Managing Agent. The policy shall be with a responsible insurance company authorized to do business in Hawaii. The policy shall have limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate for bodily injury and property damage, and \$2,000,000 products and completed operations aggregate, or other higher limits as the Board may from time to time establish with due regard to then prevailing prudent business practice in the State of

Hawaii as reasonably adequate for the protection of the Association, the Board and each Apartment Owner. The scope of coverage shall include all other coverages in the kinds and amounts required by private institutional lenders for projects similar in construction, location and use. Every such policy of insurance shall (if obtainable at reasonable cost):

- (i) Contain an endorsement precluding the insurer from denying the claim of an Apartment Owner because of the negligent acts of the Association or other Apartment Owners;
- (ii) Provide for or contain identical terms required in subsection (a) hereof.

(c) The Board, on behalf of and at the common expense of the Association, may purchase and maintain directors' and officers' liability insurance with minimum coverage in such amount as shall be determined by the Board.

(d) The Board shall review not less frequently than annually the adequacy of its insurance program and shall report in writing the Board's conclusions and any action taken on such review to each Apartment Owner and to the holder of any mortgage on any apartment who shall have requested a copy of such report. In addition, the Board shall give timely written notice to each Apartment Owner and to any mortgagee of an apartment of any lapse, cancellation or material modification of any insurance policy or fidelity bond.

(e) Copies of every policy of insurance procured by the Board shall be available for inspection by an Owner (or his mortgagee or purchaser holding a contract to purchase an interest in an apartment) at a place designated by the Board.

(f) Any coverage procured by the Board shall be without prejudice to the right of any Owner to insure his apartment and the contents thereof for his own benefit at his own expense.

(g) Any insurance coverage specified in this Section shall be subject to availability with responsible insurance companies authorized to do business in the State of Hawaii. Where such coverage is not available, or is not available at a reasonable cost, then the Board shall substitute such other insurance coverage as is acceptable to institutional lenders for projects similar in construction, location and use.

(h) The Board has the right and power to increase coverage or to obtain better terms than those stated in this Section if the Board decides that it is necessary or is in the best interests of the Association. The Board may also buy other kinds of insurance even if they are not described in this Section.

(i) The Board may accept any deductibles, uninsured retentions, and co-insurances as it chooses in its business judgment. any amount paid on account of any deductible, uninsured retention, or co-insurance will be a common expense; provided that if a loss results

from the negligence or willful misconduct of an Owner, then the Association may charge the amount to the Owner as provided in these By-Laws.

(j) The Board may designate and appoint a qualified bank or trust company authorized to do business in the State of Hawaii to act as trustee on behalf of the Association (the "Insurance Trustee") in negotiating losses under any insurance policy carried by the Association and in performing such other functions as are necessary to recover and apply the insurance proceeds in accordance with the terms of this Declaration.

## ARTICLE VI COMMON EXPENSES, APARTMENT EXPENSES, TAXES AND ACCOUNTING

### SECTION 1. Common Expenses.

(a) **Definition of Common Expenses.** Each Apartment Owner shall be liable for and pay a share of the common expenses in proportion to the common interest appurtenant to his apartment. In addition to the items otherwise designated in the Declaration or these By-Laws as common expenses, the following sums are hereby designated as common expenses: All charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration of the Project including, without limiting the operation thereof, all charges for taxes (except real property taxes and other such taxes which are or may be assessed separately on each apartment and its appurtenant common interest or the personal property or any other interest of the Apartment Owner); assessments; insurance, including fire and other casualty and liability insurance; any liability whatsoever for loss or damage arising out of or in connection with the common elements or any fire, accident or nuisance thereon; cost of repair, reinstatement, rebuilding and replacement of the premises; yard, janitorial and other similar services; wages; accounting and legal fees; management fees; start-up fees and other necessary expenses of upkeep, maintenance, management and operation actually incurred on or for the common elements; and the cost of all common area utility services, including water, electricity, gas, garbage disposal, telephone and sewer service for the apartments, unless separately metered. The Board shall also have the right, as a common expense, to install additional or separate meters to gauge utility use. Common expenses, however, shall not include any additions, alterations or any other expense made by the Developer in the exercise of the Developer's Reserved Rights.

(b) **Metered Utilities.** All charges separately attributable to an apartment or group of apartments shall be payable by the Owners of such apartments. Such amounts shall not be common expenses of the Project.

(c) **Maintenance Reserve Fund or Funds.** The Board shall establish a working capital fund for the initial months of the project operations equal to at least two months' estimated common expenses for each apartment. The Board shall also establish and maintain a maintenance reserve fund or funds by the monthly assessment against and payment by all the Apartment Owners in proportion to their respective common interests, of such annual amount as the Board determines to be adequate to provide for the common utilities, insurance, maintenance, repair, restoration, and replacement of the common elements and other expenses of administration of the Project, and the furniture, fixtures, and mechanical equipment thereof, and

for such other purposes as the Board deems necessary, all of which shall be deemed conclusively to be a common expense of the Project. Such fund or funds shall meet any requirements mandated by the Act, the Veteran's Administration or the Department of Housing and Urban Development and are further outlined in the By-Laws. The Board may include reserves for contingencies in such assessment, and such assessment may from time to time be increased or decreased at the discretion of the Board. The amount of the common expenses allocated, used or to be used for capital improvements, or any other capital expenditure, shall not be deemed income to the Association but shall be credited upon the books of the Association to the paid-in surplus account as a capital contribution by the Apartment Owner. The proportionate interest of each Apartment Owner in said fund or funds shall not be withdrawn or assigned separately but shall be deemed to be transferred with such apartment even though not mentioned or described expressly in the instrument of transfer. If the condominium property regime established hereby is terminated or waived, said fund or funds remaining after full payment of all common expenses of the Association shall be distributed to all Apartment Owners, except for the owners of apartments reconstituted as a new condominium property regime, in proportion to their respective common interest.

**(d) Special Assessments for Purchasing or Leasing Apartments.** The common expenses may also include such amounts as may be required, by special assessment, for the purchase or lease of any apartment by the Board or its designee, corporate or otherwise, on behalf of the Association, as permitted under Hawaii law or these By-Laws; provided, however, that the Board may not purchase an apartment and hold the same, or lease an apartment for a period in excess of one (1) year without obtaining approval of fifty percent (50%) of Owners.

**(e) Payment of Assessments.** Assessments of common expenses shall be payable in monthly installments on the first day of each month, and shall commence as specified in Section 13.3 of the Declaration. The Developer shall fix the rate of monthly installments of common expenses until such rate shall be redetermined by the Board of Directors. The Board may from time to time during any year increase the assessment rate or impose a special assessment to make up any existing deficiency whenever for any reason the rate then in effect shall prove inadequate, provided that the Board sends to all Apartment Owners affected written notice of any such increase or special assessment not less than 30 days before the effective date of such increase or assessment. Any portion of an Owner's assessment used or to be used by the Association for capital improvements or any other capital expenditure shall not be treated as income to the Association but shall be treated as a capital contribution by the Owners to the Association and shall be credited by the Association upon its books as paid in surplus.

**SECTION 2. Payment as Agent.** The Board will pay or cause to be paid, on behalf of the appropriate Owners, all common expenses. Each Owner, as principal, shall be liable for and pay his share, determined as provided in the Declaration and these By-Laws, of all such expenses; and the Board shall be responsible, as agent for each Owner, only to transmit the payments made by the Owner to third persons to whom such payment must be made by the Owner. The Board may require the Managing Agent to assist it in its duties hereunder. The Board or Managing Agent collecting the expenses shall not be liable for payment of such expenses as principal but only as the agent of all Owners to transmit said payments to third persons to whom such payments must be made by the Owners.

**SECTION 3. Taxes and Assessments.** Each Owner of an apartment shall be obligated to have the real property taxes for such apartment and its appurtenant common interest assessed separately by the proper governmental authority and to pay the amount of all such real property taxes so determined. The foregoing shall apply to all types of taxes which now are or may hereafter be assessed separately by law on each apartment and its appurtenant common interest or the personal property or any other interest of the Owner. Each Owner shall execute such documents and take such action as may be reasonably specified by the Board to facilitate dealing with the proper governmental authority regarding such taxes and assessments. Each Owner shall be obligated to pay to the Board his proportionate share of any assessment by the Board for any portion of taxes or assessments, if any, assessed against the entire premises or any part of the common elements as a whole and not separately. Such payment shall be made as directed by the Board. The assessments shall be levied by mailing to each Owner at the address shown in the records of the Association, a written statement setting forth the amount of the assessment against the individual apartment. If in the opinion of the Board, any taxes or assessments may be a lien on the entire premises or any part of the common elements, the Board may pay such taxes or assessments as part of the common expenses. Such assessments by the Board shall be secured by the lien created by Article VI, Section 4 [Default in Payment of Assessments].

**SECTION 4. Default in Payment of Assessments.** Each monthly assessment and each special assessment shall be the separate, distinct and personal debt and obligation, as of the date of assessment, of the Owner against whom the same are assessed and, in the case of an apartment owned by more than one person, shall be the joint and several obligation of such co-owners. Any assessment not paid within ten (10) days after its due date shall accrue interest at the rate of ten percent (10%) per annum from such due date until paid. In the event of a default or defaults in the payment of any such assessment or assessments and in addition to any other remedies the Board of Directors may have, the Board of Directors may enforce each such obligation as follows:

(a) The Board may direct the Managing Agent to deduct and apply portions of common expense payments received from an Apartment Owner to unpaid late fees (other than amounts remitted by an Apartment Owner in payment of late fees) provided it delivers or mails a written notice to such Apartment Owner, at least seven days prior to the first such deduction, which states that:

- (i) Failure to pay late fees will result in the deduction of late fees from future common expense payments, so long as a delinquency continues to exist.
- (ii) Late fees shall be imposed against any future common expense payment which is less than the full amount owed due to the deduction of unpaid late fees from such payment.

(b) The Board may institute legal action to enforce such assessment obligations. Each such action must be authorized by a majority of the Board at a regular or special meeting thereof, and any such suit may be instituted by any one member of the Board or

by the Managing Agent if the latter is so authorized in writing. Each such action shall be brought by the Board in the name of the Board and the Association, and the Board shall be deemed to be acting on behalf of the Association. Any judgment rendered in any such action shall include, where permissible under any law, a sum for attorneys' fees in such amount as the court may adjudge against such defaulting Owner. Upon full satisfaction of any such judgment, it shall be the duty of the Board to authorize any two of its members, acting in the name of the Board and the Association, to execute and deliver to the judgment debtor an appropriate satisfaction document.

(c) At any time after the occurrence of any such default, the Board (acting upon the authorization of the majority of the Board at any regular or special meeting) may give a notice to the defaulting Owner (with a copy to the mortgagee of such Owner if such mortgagee has furnished its name and address to the Board) stating the date of the delinquency, the amount of the delinquency and making demand for its payment. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may record a lien against the apartment of such delinquent Owner, which lien shall be prior to all liens except government imposed lien for taxes and assessments against the apartment and all sums unpaid on any mortgage of record recorded prior to the recording of a notice of lien by the Association and any costs and expenses, including attorneys' fees provided in such mortgage. Such lien shall state (i) the name of the delinquent Owner, (ii) a designation of the apartment against which the lien is made, (iii) the amount claimed to be due and owing (after the allowance of any proper off-set), (iv) that the lien is made by the Board pursuant to the terms of these By-Laws and the Act, and (v) that a lien is claimed against such apartment in an amount equal to the net amount of the stated delinquency plus any accrued interest and costs of enforcement, including attorneys' fees, if any. Such liens shall be signed and acknowledged by any two or more members of the Board or by the attorney for the Board, or by the Managing Agent and shall be dated as of the date of the execution by such attorney or the Managing Agent or the last such Board member to execute such lien. Upon recordation of a duly executed original or copy of such lien, the Board shall have all remedies provided in the Act. Each default shall constitute a separate basis for a lien, but a separate lien may be recorded with respect to more than one default. Action to recover a monetary judgment may be maintained without foreclosure or waiver of the lien.

(d) If the Owner of an apartment rents or leases the apartment and is in default for thirty (30) days or more in the payment of the apartment's share of the common expenses, the Board of Directors, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the apartment, an amount sufficient to pay all sums due from the Apartment Owner to the Association, including interest, if any, but the amount shall not exceed the tenant's rent due each month. The tenant's payment under this section shall discharge that amount of payment from the tenant's rent obligation, and any contractual provision to the contrary shall be void as a matter of law.

Prior to taking any action under this section, the Board of Directors shall give to the delinquent Apartment Owner written notice of its intent to collect the rent owed. The notice shall:

(1) Be sent both by first-class and certified mail;

- (2) Set forth the exact amount the Association claims is due and owing by the Apartment Owner; and
- (3) Indicate the intent of the Board of Directors to collect such among from the rent, along with any other amounts that become due and remain unpaid.

The Apartment Owner shall not take any retaliatory action against the tenant for payments under this section.

The payment of any portion of the apartment's share of common expenses by the tenant pursuant to a written demand by the Board is a complete defense, to the extent of the amount demanded and paid by the tenant, in an action for nonpayment of rent brought by the Apartment Owner against the tenant.

The Board may not demand payment from the tenant pursuant to this section if:

- (1) A commissioner or receiver has been appointed to take charge of the premises pending a mortgage foreclosure;
- (2) A mortgagee is in possession pending a mortgage foreclosures; or
- (3) The tenant is served with a court order directing payment to a third party.

(e) In a voluntary conveyance of an apartment, the grantee of the apartment shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant of conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee prior to conveyance. Any such grantee shall be entitled to a statement from the Managing Agent or Board of Directors of the Association, as the case may be, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the apartment conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth.

(f) No Apartment Owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his apartment, nor shall an Apartment Owner withhold any assessment claimed by the Association. An Apartment Owner who disputes the amount of an assessment may request a written statement clearly indicating:

- (i) The amount of common expenses included in the assessments, including the due date of each amount claimed;
- (ii) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;

- (iii) The amount of attorneys' fees and costs, if any, included in the assessment;
- (iv) That under Hawaii law, an Apartment Owner has no right to withhold assessments for any reason;
- (v) That an Apartment Owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an Association's assessment, provided the Apartment Owner immediately pays the assessment in full and keeps assessments current; and
- (vi) That payment in full of the assessment does not prevent the Owner from contesting the assessment or receiving a refund of amounts now owed.

Nothing in this Section shall limit the rights of an Owner to the protection of all fair debt collection procedures mandated under federal and state law.

(g) An Apartment Owner who pays the Association the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If the Apartment Owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under part VII of the Act. An Apartment Owner may only file for arbitration if all amounts claimed by the Association are paid in full on or before the date of filing. If the Apartment Owner fails to keep all Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the Apartment Owner pays all Association assessments within thirty (30) days of the date of suspension, the Apartment Owner may ask the arbitrator to recommence the arbitration proceedings. If the Owner fails to pay all Association assessments by the end of the thirty day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The Apartment Owner shall be entitled to a refund of any amounts paid to the Association which are not owed.

(h) For the purposes of this Section 4, a certificate executed and acknowledged or made by any two members of the Board or the Managing Agent shall be conclusive upon the Board, the Owners and all persons who rely upon it in good faith, except as to the amount of any check received within the 30 day period immediately preceding the date of such statement which is subsequently dishonored. Any Owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his apartment (or the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand thereof and upon payment of a reasonable fee not to exceed TEN DOLLARS (\$10.00). If any claim of lien is recorded and thereafter the Board receives payment in full of the amount claimed to be due and owing (including accrued interest and any costs of enforcement), then upon demand of the Owner and payment of a reasonable fee, not to exceed TWENTY-FIVE DOLLARS (\$25.00), the Board, acting by any two members, shall execute, acknowledge and deliver to the Owner a release of lien, stating the date of the original claim of lien, the amount

claimed, the date, the recordation data and/or the Land Court document number of the claim of lien and that the lien is fully satisfied, released and discharged.

(i) Notwithstanding anything stated in these By-Laws to the contrary, if any damage or destruction to a common element or limited common element is caused solely by the acts or conduct of one Apartment Owner, his tenants, guests, visitors or co-occupants, then only such Apartment Owner shall be responsible and be liable to pay for the repair to any such damaged common element. Said Apartment Owner shall promptly reimburse the Association for any and all costs and expenses incurred in restoring or repairing any such damaged or destroyed common element. All sums assessed by the Association but remaining unpaid in connection with the restoration or repair of any such damaged or destroyed common element shall be subject to the same provisions governing unpaid common expenses, and the Association shall have all of the rights and remedies afforded the Association with respect to unpaid common expenses as provided in these By-Laws.

**SECTION 5. Foreclosure.** Any lien created pursuant to Article VI, Section 4 [Default in Payment of Assessments] above may be foreclosed upon by action of the Managing Agent or Board of Directors, acting on behalf of the Apartment Owners. In any such foreclosure, the Apartment Owner shall be required to pay a reasonable rental for the apartment and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rent. The Managing Agent, or Board of Directors, acting on behalf of the Apartment Owners may bid on the apartment at the foreclosure sale, and may acquire and hold, lease, mortgage and convey it pursuant to the Declaration and these By-Laws. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the judgment.

Prior to foreclosing upon such lien, the Board of Directors or Managing Agent shall provide thirty (30) days prior written notice of intention to foreclose by mailing written notice, postage prepaid, to all persons having any interest in such apartment as shown in the Association's record of ownership, including, but not limited to, any holder or insurer of a mortgage of any interest in such apartment.

Where the mortgagee of a mortgage of record or other purchaser of any apartment obtains title to the apartment pursuant to the mortgage, or as a result of foreclosure of the mortgage, a conveyance in lieu of foreclosure, or exercise of the remedies provided in the mortgage, the acquirer of title, his successors and assigns, shall not be solely liable for the share of the common expenses or assessments by the Association chargeable to the apartment which become due prior to the acquisition of title to the apartment by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectable from all of the Apartment Owners, including the acquirer, his successors or assigns.

(a) As an alternative to foreclosure proceedings, where an apartment is owner-occupied, the Association of Apartment Owners may authorize its managing agent or Board of Directors to, after sixty (60) days' written notice to the apartment owners and to the apartment's first mortgagee of the nonpayment of the apartment's share of common expenses, terminated the delinquent apartment's access to the common elements and cease supplying the a delinquent

apartment with any and all services normally supplied or paid for by the Association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments. Before the Board of Directors may take the actions permitted under this section, the Board must adopt a written policy providing for such actions and have the policy approved by a majority of the apartment owners at an annual or special meeting of the Association or by written consent of a majority of the apartment owners.

(b) If the owner of any apartment rents or leases the apartment and is in default for thirty (30) days or more in the payment of the apartment's share of the common expenses or the limited common expenses, the Board of Directors, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the apartment, an amount sufficient to pay all sums due from the apartment owner of the Association including interest, if any, but the amount shall not exceed the tenant's rent due each month. The tenant's payment under this section shall discharge that amount of payment from the tenant's rent obligation and any contractual provision to the contrary shall be void as a matter of law. Prior to taking any action under this section, the Board of Directors shall give the delinquent apartment owner written notice of its intent to collect the rent owed. The notice shall: 1) be sent both by first class and certified mail; 2) set forth the exact amount the Association claims is due and owing by the apartment owners and 3) invalidate the intent of the Board of Directors to collect such amount from the rent, along with any other amounts that become due and remain unpaid. The apartment owner shall not take any retaliatory action against the tenant for payments under this section. The payment of any portion of the apartment's share of the common expenses and/or limited common expenses by the tenant pursuant to a written demand by the Board is a complete defense, to the extent of the amount demanded and paid by the tenant, in an action for non-payment of rent brought by the apartment owners against a tenant.

**SECTION 6. Waiver.** The failure of the Board to insist in any one or more instances upon strict performance of or compliance with any of the covenants of the Owner contained in these By-Laws or to exercise any right or option herein contained or to serve any notice or to institute any action or summary proceeding shall not be construed as a waiver or a relinquishment for the future, of such covenant, option or right, but such covenant, option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by an Owner, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach. No waiver, express or implied, by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in resolution of the Board of Directors.

**SECTION 7. Books of Account; Audit.** The Board, on behalf of all Owners, will maintain or cause to be maintained books of account of the common expenses in accordance with recognized accounting practices and shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The Board shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses.

The members of the Association shall require an annual audit of the Association's financial accounts and no less than one annual unannounced verification of the Association's cash balance by a public accountant. If the Association is comprised of less than 20 Owners, the annual audit and the annual unannounced cash balance verification may be waived by a majority vote of all Apartment Owners taken at an Association meeting. The Board shall make available a copy of the annual audit to each Apartment Owner at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year. All proxy forms shall provide a box where the Owner may indicate that he wishes to obtain either a summary or an unabridged copy of the annual audit report. The Board shall not be required to provide the report or a summary if the proxy form is not marked. If the annual audit is not completed by that date, the Board shall make available:

(a) An unaudited year-end financial statement for the fiscal year to each Apartment Owner at least thirty (30) days prior to the annual meeting; and

(b) The annual audit to all Owners at the annual meeting, or as soon as the audit is completed, whichever occurs later.

If the Association's fiscal year ends less than two months prior to the convening of the annual meeting, the year to date unaudited financial statement may cover the period from the beginning of the Association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed. Any Owner may, at his expense, cause an annual inspection to be made of the books and records of the Association.

#### **SECTION 8. Association of Apartment Owners Funds; Handling and Disbursement.**

(a) The funds in the general operating account of the Association shall not be commingled with funds of other activities such as lease rent collections and rental operations, nor shall the Managing Agent commingle any Association funds with the Managing Agent's own funds.

(b) For purposes of subsection (a), lease rent collections and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the Association; provided that:

(i) The collection is allowed by the provisions of the Declaration and By-Laws; and

(ii) The system of lease rent collection is approved by a majority of all Apartment Owners at a meeting of the Association.

(c) All funds collected by the Association, or by the Managing Agent for the Association, shall be:

- (i) Deposited in a financial institution located in the state whose deposits are insured by an agency of the United States government;
- (ii) Held by a corporation authorized to do business under Chapter 406, Hawaii Revised Statutes; or
- (iii) Invested in the obligations of the United States government.

Records of the deposits and disbursements shall be disclosed to the Real Estate Commission upon request. All funds collected by the Association shall only be disbursed by employees of the Association under the supervision of the Board. All funds collected by the Managing Agent from the Association shall be held in a client trust fund account and shall be disbursed only by the Managing Agent or the Managing Agent's employees under the supervision of the Board.

(d) The Managing Agent or Board shall not transfer Association funds by telephone between accounts, including but not limited to the general operating account and reserve fund account.

(e) The Managing Agent shall keep and disburse funds collected on behalf of the Apartment Owners in strict compliance with any agreement made with the Apartment Owners, Chapter 467 of the Hawaii Revised Statutes, the rules of the Real Estate Commission, and all other applicable laws.

(f) Any person who embezzles or knowingly misapplies Association funds received by the Managing Agent or the Association shall be guilty of a class C felony.

**SECTION 9. Examination of Records.** Financial statements, general ledgers, the accounts receivable and payable ledgers, check ledgers, insurance policies, contracts and invoices of the Association for the current and prior year and delinquencies of ninety (90) days or more, shall be kept and maintained at the address of the Project, or elsewhere within the State as determined by the Board, and shall be available for examination by any Owner at no cost, or on twenty-four (24) hour loan, at a convenient location designated by the Board; provided that:

(a) The Board may require the Apartment Owner to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the Association or its members or both; and

(b) The Apartment Owner must pay for any administrative costs connected with furnishing such information in the event that providing such information exceeds eight hours of an Association employee's time to comply with the request.

Copies of these items shall be provided to any Apartment Owner upon the Owner's request, provided that the Owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request. Owners may file a written request with the Board to examine other documents. The Board shall give written authorization or written

refusal with an explanation of the refusal within thirty (30) calendar days of receipt of the request.

**SECTION 10. Disposal of Records.** The Managing Agent may dispose of the records of the Association which are more than five years old without liability if the Managing Agent first provides the Board with written notice of the Managing Agent's intent to dispose of the records if not retrieved by the Board within sixty days. The notice shall include an itemized list of the records of which the Managing Agent intends to dispose.

**SECTION 11. No Alteration of Documents.** No person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records of either the Managing Agent or the Association. No person shall knowingly alter, destroy, mutilate or conceal any books or records of the Managing Agent or the Association.

## **ARTICLE VII MORTGAGEES**

**SECTION 1. Notice of Unpaid Common Expenses.** The Board, whenever so requested in writing by a purchaser or mortgagee of an interest in an apartment, shall promptly report any then unpaid assessments for common expenses due from the Owner of the apartment involved.

**SECTION 2. Notice of Default.** When giving notice to an Apartment Owner of a default in paying common expenses or other default, the Board of Directors shall send a copy of such notice to each holder and insurer of a mortgage covering any interest in such apartment whose name and address has previously been furnished to the Board.

**SECTION 3. Additional Notices to Mortgagees.** A holder or insurer of a first mortgage, upon written request to the Association (such request to state the name and address of such holder or insurer and the apartment number), will be entitled to:

(a) Timely written notice of any proposed amendment to the Declaration or these By-Laws effecting a change in (1) the boundaries of an apartment, (2) the common interest appertaining to the apartment, or (3) the purposes to which the apartment, the limited common elements appurtenant thereto or the common elements are restricted;

(b) Prior written notice of any proposed termination of the Condominium Property Regime;

(c) Prior written notice of any actual or threatened condemnation or eminent domain proceedings affecting the Project or any portion thereof;

(d) Timely written notice of any significant damage or destruction to the common elements or a casualty loss affecting the apartment on which there is a first mortgage held or insured by the party requesting notice;

(e) A copy of all pleadings recorded in any lawsuit, administrative proceeding or other action affecting the Project or any portion thereof excluding, however, judicial foreclosures of liens for common expenses in favor of the Association and any foreclosures of mortgages in which the Association is a named party;

(f) A copy of any bond required to be posted before commencing or permitting construction of any improvements on the Project;

(g) Prior written notice of any proposal to subdivide, encumber, sell or transfer all or part of the common elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause); and

(h) Timely written notice of all meetings of the Association. Said holder or insurer of a first mortgage shall be permitted to designate a representative to attend all such meetings.

#### **SECTION 4. Mortgagee Approval.**

(a) Except as provided in Section 514B-47 of the Act, the Project shall not by act or omission be abandoned, terminated, or removed from the Condominium Property Regime without prior written consent of all mortgagees.

(b) No apartment shall be partitioned or subdivided without the prior written consent of the mortgagee of such apartments.

(c) Unless at least eighty percent (80%) of the first mortgagees (based upon one vote for each first mortgage held), and eighty percent (80%) of the Apartment Owners (other than the Developer) have given their prior written approval, the Association shall not be entitled to:

- (i) By act or omission, abandon, partition, subdivide, encumber, sell or transfer the common elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the Project shall not be deemed a transfer within the meaning of this clause);
- (ii) Use hazard insurance proceeds for losses to the Project or any part thereof (whether to apartments or to common elements) for other than the repair, replacement or reconstruction of the same, except as otherwise provided by the Declaration, these By-Laws or the Act;
- (iii) Terminate professional management and assume self-management of the Project.

**SECTION 5. Examination of Books.** Each holder or insurer of a mortgage of an apartment shall be permitted to examine the books of account of the Association at reasonable times on business days, but not more often than once a month.

**SECTION 6. Annual Reports and Other Financial Data.** Each holder or insurer of a mortgage of an apartment may require, and shall receive upon request, such financial data and/or an annual audited financial statement of the financial status of the Association and of the Project within ninety (90) days following the end of any fiscal year of the Project.

**SECTION 7. Mortgagee Protection.** Notwithstanding all other provisions hereof:

(a) The liens by these By-Laws upon any apartment shall be subject and subordinate to, and shall not affect the rights of the holder of any indebtedness secured by any recorded mortgage of such interests made for value, which was recorded prior to the recordation of a notice of a lien by the Association. After the foreclosure of any such mortgage, there shall be a lien upon the interests of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed to such apartment if falling due after the date of such foreclosure sale, and such purchaser's pro rata share of unpaid assessments falling due before the conveyance to the purchaser. The lien shall have the same effect and be enforced in the same manner as provided in Article VI, Section 4 [Default in Payment of Assessments].

(b) No amendment to this Section 7 shall affect the rights of the holder of any such mortgage which has been duly recorded prior to the recordation of such amendment, who does not join in the execution thereof.

**SECTION 8. Notice to Board of Directors.** An Apartment Owner who mortgages his interest in an apartment shall notify the Board of the name and address of his mortgagee and within ten (10) days after the execution of the same shall record a conformed copy of the mortgage with the Board. The Board shall maintain such information in a book entitled "Mortgagees of Apartments".

## **ARTICLE VIII LAND TRUST**

**SECTION 1. Operation and Control.** If title to any apartment is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the apartment remain vested in the trust beneficiary or beneficiaries, the trust estate and the beneficiaries thereunder from time to time shall be liable for and shall pay all common expenses and all other charges, costs and expenses assessed against such apartment or the owner thereof pursuant to the Declaration, these By-Laws, the Rules and Regulations or the Act.

**SECTION 2. Common Expenses.** No claim for payment of common expenses or other charges, costs or expenses shall be made against any such trustee personally and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or assessment, but the amount thereof shall constitute a lien on the

apartment as provided in the Declaration, these By-Laws and the Act, notwithstanding any transfer of beneficial interest under such trust.

## **ARTICLE IX LITIGATION**

No judicial or administrative proceedings shall be commenced or prosecuted by the Board or the Association unless approved by a vote of seventy-five percent (75%) of the Apartment Owners. This Article shall not apply, however, to (a) actions to enforce the provisions of the Declaration, By-Laws or any other rules and regulations adopted by the Board or the Association relating to the use or occupancy of the apartments or the common areas, or the conduct of owners or occupants of the apartments; (b) actions to enforce the rights of the Association under any contract for goods or services entered into by the Board pursuant to the powers given it under these By-Laws, the Declaration or by statute; (c) the imposition and collection of assessments as provided in the Declaration and in Article VI hereof (including, without limitation, the foreclosure of liens); or (d) counterclaims brought by the Association in proceedings instituted against it.

## **ARTICLE X GENERAL PROVISIONS**

**SECTION 1. Rules and Regulations.** The Developer shall initially establish and the Board (upon giving notice to all Apartment Owners in the same manner as herein provided for notice of meetings of the Association and an opportunity to be heard thereon) may thereafter establish and amend such Rules and Regulations as the Developer or the Board, as the case may be, may deem necessary for the operation and use of the common elements and limited common elements. The Apartment Owner's rights under this instrument shall in all respects be subject to the Rules and Regulations, which shall be deemed to be a part hereof. Each Apartment Owner shall abide by all such Rules and Regulations, as amended and shall see that they are faithfully observed by the invitees, guests, employees and tenants of the Apartment Owner. The Rules and Regulations shall uniformly apply to and be binding upon all occupants of the apartments. The Board may establish reasonable fines and penalties to enforce the Rules and Regulations and provisions of the condominium documents upon giving notice to all Apartment Owners in the same manner as herein prescribed for notice of meetings.

**SECTION 2. Restrictions on Pets.** No livestock, poultry shall be allowed in the Project. Only a reasonable number of common household pets such as dogs, cats, guinea pigs, rabbits, birds or fish and may be kept inside the units and in the limited common areas for the units; provided they shall not be kept, bred or used for any commercial purposes. The animals shall not include those described as pests under Section 150A-2, Hawaii Revised Statutes, or animals prohibited from importation under Sections 141-2, 150A-5 or 150A-6, Hawaii Revised Statutes. Any pet causing a nuisance or unreasonable disturbance shall be promptly and permanently removed upon notice by the Managing Agent at the direction of the Board of Directors. All pets (except fish) must be registered with the Managing Agent or other person specified by the Managing Agent.

Animals are not allowed on the common elements except when carried or on a leash. Owners must immediately clean up any droppings left by their pets on any common areas. Certified guide dogs, certified signal dogs and certified service dogs are allowed on the common elements while on a leash as long as they are accompanied by their owners at all times.

If certified guide dogs, certified signal dogs or certified service dogs cause a nuisance the handicapped resident shall be responsible for abating the nuisance within a reasonable time. If the handicapped resident is unable to abate the nuisance, the dog must be removed from the Project. The resident will be given a reasonable amount of time to replace the dog before he is required to remove the dog causing the nuisance.

Notwithstanding the foregoing, certified guide dogs, signal dogs and service dogs shall be allowed in the common elements while on a leash, provided that such animals shall at all times be accompanied by the handicapped occupant. The foregoing exception shall also apply to certified guide dogs, signal dogs and service dogs used by handicapped guests.

If said certified guide dogs, signal dogs or service dogs cause a nuisance, the handicapped occupant shall be responsible for abating the nuisance within a reasonable time. If the handicapped occupant is unable to abate the nuisance, the handicapped occupant will be required to remove the animal from the project. The handicapped occupant will be provided with a reasonable amount of time to secure a replacement animal before he is required to remove the animal causing the nuisance.

If the Owner has agreed in writing to allow his tenants to keep pets in the apartment, the tenants may keep only those types of pets which may be kept by the Owner.

Any Owner who is keeping a pet, not prohibited by these By-Laws, as of the effective date of an amendment to these By-Laws which prohibits pets, may, upon the death of the pet, replace the animal with another and continue to do so for as long as the Owner continues to reside in the Project.

### **SECTION 3. Abatement and Enjoinment of Violations by Apartment**

**Owners.** The violation of any of the Rules and Regulations, the breach of any of these By-Laws or the breach of any provision of the Declaration shall give the Board the following rights in addition to any other rights set forth in these By-Laws:

(a) To enter the apartment in which, or as to which, such violation or breach exists and summarily abate and remove, at the expense of the defaulting Apartment Owner, any structure, thing or condition that may exist therein in violation of the Rules and Regulations, these By-Laws or the Declaration. The Board shall not be guilty of any trespass, provided, however, that notwithstanding the foregoing, the Board shall have such right of entry only in the instance where such violation or breach threatens an immediate, substantial and undeniable threat to life, limb or property of any Apartment Owner, member of his family, tenant, guest or invitee; or

(b) To enjoin, abate or remedy by appropriate legal proceedings, the continuance of any such breach, and all costs thereof, including attorneys' fees, shall be paid by the defaulting Apartment Owner on demand.

(c) To implement: (a) a schedule of reasonable fines and/or penalties for specific violations; (b) specific methods and procedures for determining such violations and culpability therefor; and (c) the manner in which such penalties shall be enforced and collected.

**SECTION 4. Penalties for Violations.** The Association shall have the right to charge or assess any penalties for violations against any Owner. The Board may establish a schedule of penalties for specific violations; establish reasonable specific methods and procedures for determining such violations and culpability therefor; and establish the manner in which such penalties shall be enforced and collected. Fines and penalties accrued against an apartment shall be treated as an assessment as described in Section 4, Article VI defaults of which shall be treated pursuant to Sections 4 and 5 of Article X of these By-Laws.

**SECTION 5. Arbitration of Grievances and Disputes.** At the request of any party, any grievance or dispute concerning or involving one or more Apartment Owners and the Association, the Board, the Managing Agent or one or more other Apartment Owners relating to the interpretation, application or enforcement of the Act, the Declaration, these By-Laws or any Rules or Regulations adopted pursuant to Article X, Section 1 [Rules and Regulations] above, shall be submitted to arbitration as provided by Section 514B-162 of the Act. Notwithstanding any provision in the Act to the contrary, the Declaration or these By-Laws, the award of any costs, expenses and legal fees by the arbitrator shall be in the sole discretion of the arbitrator and the determination of costs, expenses and legal fees shall be binding upon all parties. Nothing in this Section shall be interpreted to require the arbitration of any grievance or dispute which is either exempt from arbitration or determined to be unsuitable for arbitration pursuant to Section 514B-162 of the Act.

**SECTION 6. Expenses of Enforcement.** Every Apartment Owner, occupant, tenant, employee of an Owner or any other person who may in any manner use the Project shall pay to the Association promptly on demand all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association in collecting any delinquent assessments against such apartment, foreclosing its lien therefor or enforcing against such person or persons any provisions of the Declaration, these By-Laws, the Rules and Regulations or the rules of the Real Estate Commission. However, if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by such person or persons as a result of the Association's action shall be promptly paid to such person or persons on demand. The unpaid amount of such costs and expenses incurred as a result of such substantiated claims against any Apartment Owner or the occupant, tenant or employee of any Apartment Owner shall constitute a lien against his interest in his apartment which may be foreclosed by the Board of Directors or Managing Agent as herein provided and in the same manner as provided in the Condominium Property Act for common expenses; provided, however, that the lien for such costs and expenses shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the apartment and to all sums unpaid on mortgages of record.

If any claim by an Owner against the Association, any of its officers or directors or the Board is substantiated in an action demanding enforcement of any provision of the Declaration, these By-Laws, the Rules and Regulations, the Act, or the rules of the Real Estate Commission, then all reasonable and necessary costs and expenses, including attorneys' fees, incurred by such Owner as a result of such action shall be awarded to such Owner. However, no such award shall be made in any derivative action unless: (a) the Owner shall have demanded and allowed a reasonable time for the Board to pursue such enforcement; or (b) the Owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board would have been fruitless.

If any claim by an Owner is not substantiated in any court action against an association, any of its officers or directors, or its board of directors to enforce any provision of the declaration, by-laws, rules and regulations, or the Act, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an association shall be awarded to the association, unless the action was filed in small claims court or prior to filing the action in a higher court the Owner has first submitted the claim to mediation, or to arbitration under part VII of the Act, and made a good faith effort to resolve the dispute under any of these procedures.

**SECTION 7. Right of Access.** The Managing Agent and any other person authorized by the Board or the Managing Agent shall have a right of access to any Owner's apartment for the purpose of making inspections where there is reason to believe that there is a condition existing in an apartment which threatens to damage another apartment or the common elements, or for the purpose of correcting any condition existing in an apartment and threatening another apartment or a common element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other common elements in an apartment or elsewhere in the buildings, provided that requests for entry shall be made in advance and any such entry shall be at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be granted immediately, whether the Owner is present at the time or not.

**SECTION 8. Owners May Incorporate.** All of the rights, powers, obligations and duties of the Owners imposed hereunder may be exercised and enforced by a nonprofit membership corporation formed by the Owners under the laws of the State of Hawaii for the purposes herein set forth. Such corporation shall be formed upon the written approval of seventy-five percent (75%) in interest of the voting Owners. The formation of such corporation shall in no way alter the terms, covenants and conditions set forth herein, and the Articles and By-Laws of such corporation shall be subordinated hereto and controlled hereby. Any action taken by such corporation in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect.

**SECTION 9. Notices.** All notices to the Association shall be mailed or delivered to the Board, in care of the Managing Agent, or, if there is no Managing Agent, to the office of the Board or to such other address as the Board may hereafter designate by notice in writing to all Owners and all mortgagees of apartments. Any notices to mortgagees of apartments shall be sent by mail to their respective addresses, as designated by them in writing given to the Board. All notices shall be deemed to have been given when mailed, except notices

of change of address, which shall be deemed to have been given when received. If any interest in an apartment is transferred to a trustee under a land title holding trust under which substantially all powers of management, operation and control of the apartment remain vested in the trust beneficiary or beneficiaries, notice shall be deemed given sufficiently for all purposes if it is in writing and is delivered personally or by registered or certified mail to the trustee of any such trust and to any beneficiary whose name and address has been furnished to the Board.

**SECTION 10. Inspection of Condominium Property Regime Documents.**

During normal business hours or under other reasonable circumstances, the Association shall have available for inspection by Owners, lenders (and the insurer of a first mortgage on any apartment) and prospective purchasers, current copies of the Declaration, By-Laws and other rules governing the operation of the Project and the most recent annual financial statement of the Association.

**SECTION 11. Captions.** The captions herein are inserted only as a matter of convenience and for reference and shall in no way define, limit or prescribe the scope of these By-Laws or the intent of any provision hereof.

**SECTION 12. Gender.** The use of any gender in these By-Laws shall be deemed to include either or both of the other genders and the use of the singular shall be deemed to include the plural whenever the context requires.

**SECTION 13. Waiver.** No restriction, condition, obligation or provision in these By-Laws shall be deemed abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

**SECTION 14. Interpretation.** The provisions of these By-Laws shall be liberally construed to effectuate the purpose of creating a uniform condominium complex whereby the Owners of apartments shall carry out and pay for the operation and maintenance of the Project as a mutually beneficial and efficient establishment.

Nothing in these By-Laws shall be deemed or construed to authorize the Association or Board to conduct or engage in active business for profit on behalf of any or all of the Apartment Owners.

**SECTION 15. Compliance with Hawaii Law.** The Declaration and these By-Laws are subject to the laws of the State of Hawaii, including but not limited to the Act and the Hawaii Administrative Rules, Title 16, Chapter 107.

**SECTION 16. Amendment.** Except as otherwise provided herein, the provisions of these By-Laws, other than this Section, may be amended in accordance with Section 514B-108 of the Act by the vote or written consent of at least sixty-seven percent (67%) of the Apartment Owners; provided that the prior written consent of the first mortgagees, if any, of not less than sixty-seven percent (67%) of the apartment owners shall also be required to approve any amendment of this Section or of Article II, Section 3 [Notice of Meetings and Other Notices]; Article II, Section 9 [Proxies and Pledges]; Article III, Section 7(z) [Powers and

Duties]; Article III, Section 9(c) [Fidelity Bond]; Article III, Section 14(a) [Fidelity Bonds]; Article V [Use, Maintenance and Alteration of Project]; Article VI [Common Expenses, Apartment Expenses, Taxes and Accounting]; or Article VII [Mortgagees] that materially affects their rights. Each one of the particulars set forth in Section 514B-108 of the Act shall always be embodied in these By-Laws. Amendments to these By-Laws may be proposed by the Board or by a volunteer Apartment Owners' committee, and any proposed amendment shall be accompanied by a written explanation of the rationale therefor. Any amendments proposed by a volunteer Apartment Owners' committee shall be accompanied by a petition in favor of the proposed amendments signed by not less than twenty-five percent (25%) of the Apartment Owners. However, a volunteer Apartment Owners' Committee may not submit a petition for a proposed bylaw which is substantially similar to that which has been previously mailed to the Apartment Owners within one year after the original petition was submitted to the Board. Within thirty (30) days after the receipt of such petition to amend the By-Laws, the Board shall mail the proposed amendments, the rationale therefor and ballots for voting on the proposed amendments without charge to all Apartment Owners at the expense of the Association. The vote or written consent required to adopt the proposed changes must be obtained within three hundred sixty-five (365) days after mailing. Any amendments to these By-Laws shall be evidenced by a written instrument in form suitable for recordation which sets forth the amendment and the manner in which it was duly approved and which is signed and acknowledged by any two (2) officers of the Association. The amendment shall be effective only upon recordation of the instrument, together with all required consents.

#### **SECTION 17. Restatement of Declaration and By-Laws.**

(a) Notwithstanding any other provision in these By-Laws or of the Act, the Association may at any time restate the Declaration or these By-Laws to set forth all amendments thereof by a resolution adopted by the Board.

(b) The Association may at any time restate the Declaration or these By-Laws to amend the Declaration or By-Laws as may be required in order to conform with the provisions of the Act or of any other statute, ordinance, rule or regulation enacted by any governmental authority, by a resolution adopted by the Board, and the restated Declaration or By-Laws shall be as fully effective for all purposes as if adopted by the vote or written consent of the Apartment Owners. Any such restated document shall identify each portion so restated and shall contain a statement that those portions have been restated solely for purposes of information and convenience, identifying the statute, ordinance, rule or regulation implemented by the amendment, and that in the event of any conflict, the restated Declaration or By-Laws shall be subordinate to the cited statute, ordinance, rule or regulation.

(c) Upon the adoption of a resolution pursuant to subsections (a) or (b) above, the restated Declaration or By-Laws shall set forth all of the operative provisions of the Declaration or By-Laws, as amended, together with a statement that the restated Declaration or By-Laws correctly sets forth without change the corresponding provisions of the Declaration or By-Laws, as amended, and that the restated Declaration or By-Laws supersedes the original Declaration or By-Laws and all prior amendments.

(d) The restated Declaration or By-Laws shall be recorded in the manner provided in Section 514B-109 of the Act, or both, and upon recordation shall supersede the original Declaration or By-Laws and all prior amendments. In the event of any conflict, the restated Declaration or By-Laws shall be subordinate to the original Declaration or By-Laws and all prior amendments.

**SECTION 18. Severability.** The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

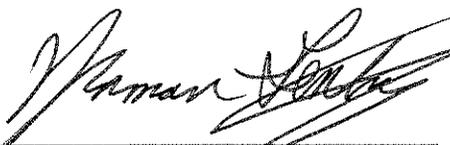
The Developer, acting as the initial Association of Apartment Owners, hereby adopts the foregoing as the By-Laws of the Association of Apartment Owners of MONTECITO/TUSCANY III Condominium Project on behalf of the Association on August 15, 2006.

GENTRY HOMES, LTD.,  
a Hawaii corporation

By   
ROBERT W. BRANT  
Its President

“Developer”

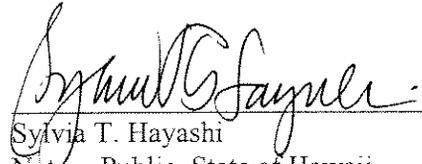
GENTRY INVESTMENT PROPERTIES  
a Hawaii limited partnership  
By Its General Partner:  
Gentry-Pacific, Ltd.,  
a Hawaii corporation

By   
NORMAN GENTRY  
Its President

“Gentry Investment Properties”

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On August 15, 2006, before me appeared **ROBERT W. BRANT** and **NORMAN GENTRY**, to me personally known, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

  
\_\_\_\_\_  
Sylvia T. Hayashi  
Notary Public, State of Hawaii  
My commission expires October 26, 2007

**EXHIBIT "A"**

ALL of those certain parcels of land situate at Honouliuli, District of Ewa, Island of Oahu, State of Hawaii, described as follows:

**Lots 1 to 7**, as shown on DPP File No. 2005/Sub-180

Being a portion of Lot 16635, as shown on Map 1292, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, deceased.

Being a portion of the land described in Land Court Certificate of Title No. 792,716

**NOTE:**        *This Exhibit "A" will be updated once the Land Court version of DPP File No. 2005/Sub-180 has recorded and Gentry Homes, Ltd. has acquired the fee interest in the above referenced lots.*

**END OF EXHIBIT "A"**

EXHIBIT 'M'

REGISTERED ARCHITECT'S CERTIFICATE

STATE OF HAWAII )  
 ) ss.  
CITY AND COUNTY OF HONOLULU )

The undersigned, **JOHN L. SHAW** states as follows:

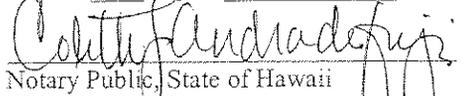
That he is an architect registered with the State of Hawaii, Hawaii Registration No. A-5701;

That the floor and elevation plans of **Buildings T2-001 to T2-016, inclusive, in MONTECITO/TUSCANY III** (Tuscany 2, Phase 1) condominium project depict the layout, location, unit numbers and dimensions of the condominium units comprising said Buildings and are hereby certified to be consistent with the plans of the condominium's buildings to be filed with the officer of the City and County of Honolulu having jurisdiction over the issuance of permits for the construction of buildings.

That there are a total of seventeen (17) sheets which constitute the plans for **MONTECITO/TUSCANY III**.

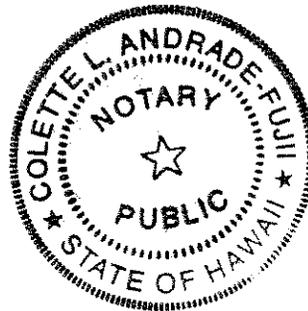
  
\_\_\_\_\_  
JOHN L. SHAW

SUBSCRIBED AND SWORN to before  
me this 24 day of AUG, 2006

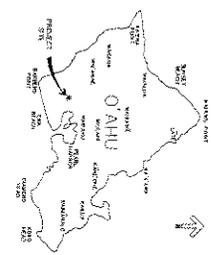
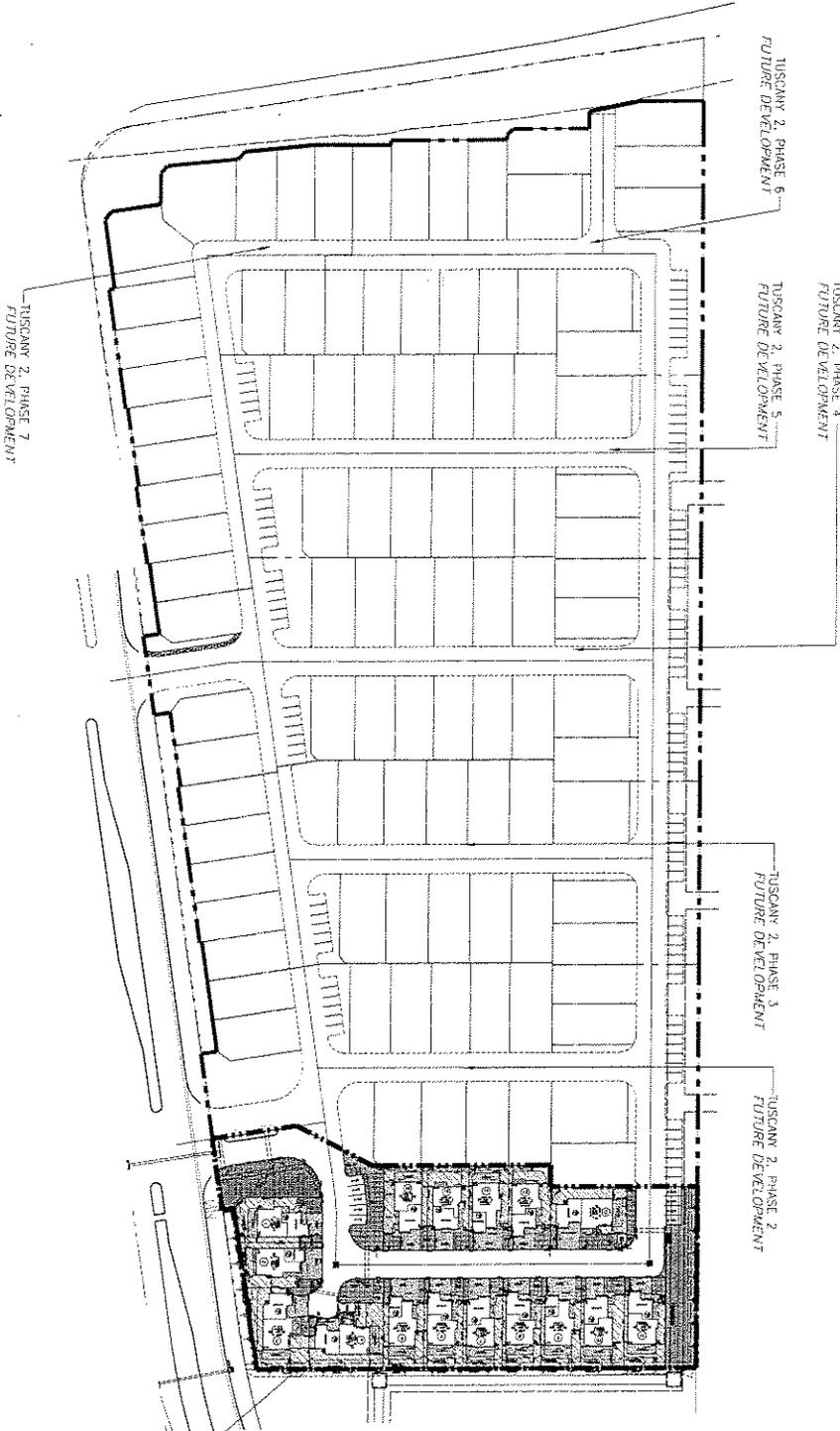
  
Notary Public, State of Hawaii

Notary's Printed Name: Colette L. Andrade-Fujii

My Commission Expires: July 17, 2008



EWA by GENTRY AREA 39  
 MONTECITO / TUSCANY III



**A** PARTIAL SITE PLAN  
 SEE ENLARGED  
 T1 TUSCANY 2, PHASE 1  
 NOT TO SCALE

**B** LOCATION MAP  
 T1  
 NOT TO SCALE

**C** VICINITY MAP  
 T1  
 NOT TO SCALE

**A** OVERALL SITE / KEY PLAN  
 T1  
 SCALE: 1"=50'

REVISIONS	
NO.	DESCRIPTION

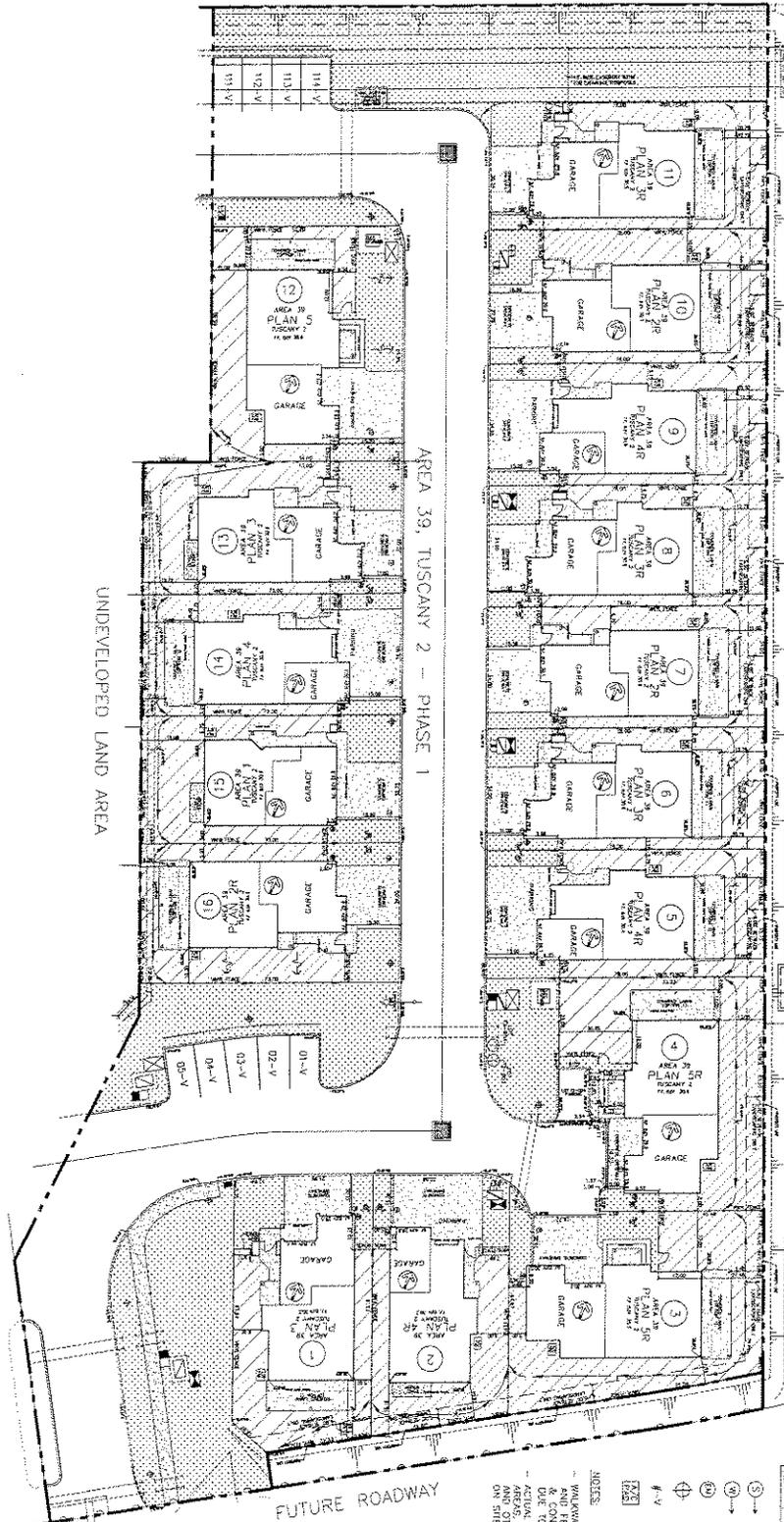
**GENTRY HOMES LTD**  
 560 N. NIMITZ HWY., SUITE 213  
 HONOLULU, HAWAII 96817  
 (808)-308-9281  
 © 1998 - GENTRY HOMES LTD.  
 REFERENCE NO.: /arch2/area39/A39\_P01

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*[Signature]* DATE: 7.20.98



EWA by GENTRY AREA 39  
 "MONTECITO / TUSCANY III"



FUTURE PARK

AREA 39, TUSCANY 2 - PHASE 1

UNDEVELOPED LAND AREA

FUTURE ROADWAY

LEGEND:

- APPROX. LIMIT OF YARD AREA
- APPROXIMATE LIMIT OF ASSESSOR'S MAP
- UNDERSCREENING (COMMON AREA)
- APPROXIMATE LOCATION OF CONC. ENTRYWAY, WALKWAY, & PARKING (LIMITED COMMON AREA)



- APPROX. SEWER LINE LOCATION
- APPROX. WATER LINE LOCATION
- APPROX. ELECT. METER LOCATION
- APPROX. LOCATION OF STREET LIGHT
- APPROX. PARKING
- AIR CONDITIONING PAD

NOTES:

1. HANDMADE DIMENSIONS, SET BACKS, AND FENCED YARD SIZES, LOCATIONS, & CONSTRUCTION'S MAY VARY DUE TO JUDICIAL CONDITIONS.

2. APPROXIMATE DIMENSIONS, COMMON AREAS, LIMITED COMMON AREAS, AND OTHER FEATURES MAY VARY DUE TO SITE CONDITIONS.

← A ENLARGE PARTIAL SITE PLAN  
 ST SCALE: 1"=16'

AREA 39 "MONTECITO/TUSCANY III"  
 CPR SET (TUSCANY 2, PHASE 1)

ENLARGE PARTIAL SITE PLAN  
 LEGEND  
 NOTES

NO.	DATE	DESCRIPTION

**GENTRY HOMES LTD.**  
 580 N. NIMITZ HWY., SUITE 212  
 HONOLULU, HAWAII 96817  
 (808) 855-8585  
 © 1998 - GENTRY HOMES LTD.

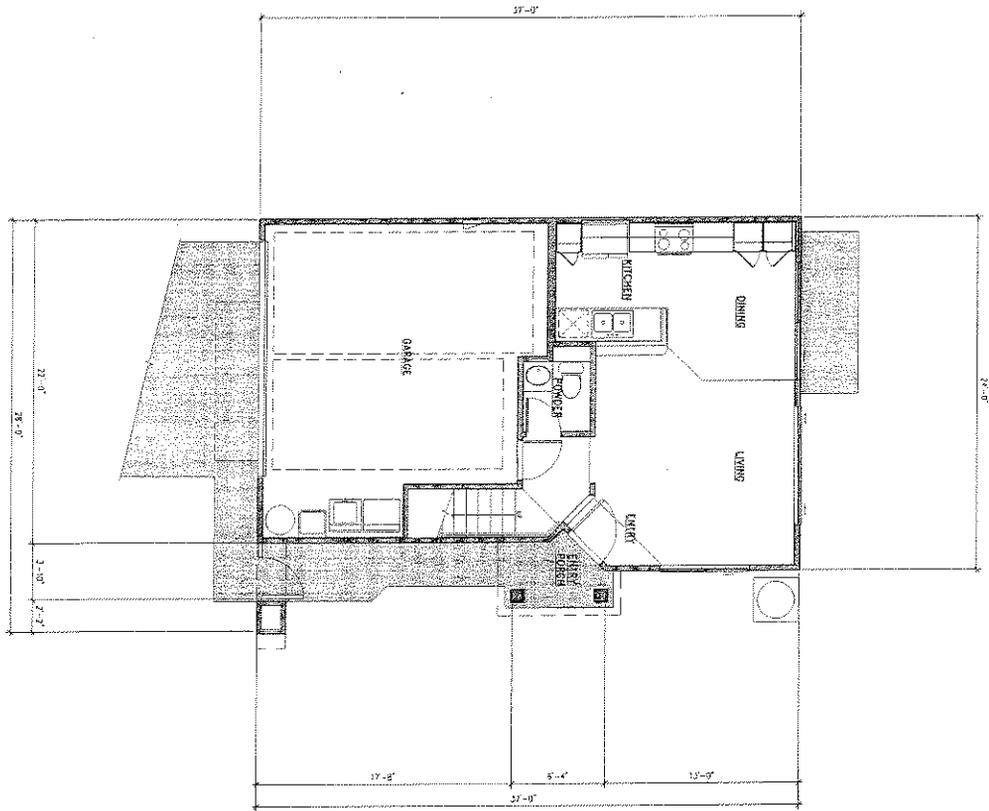
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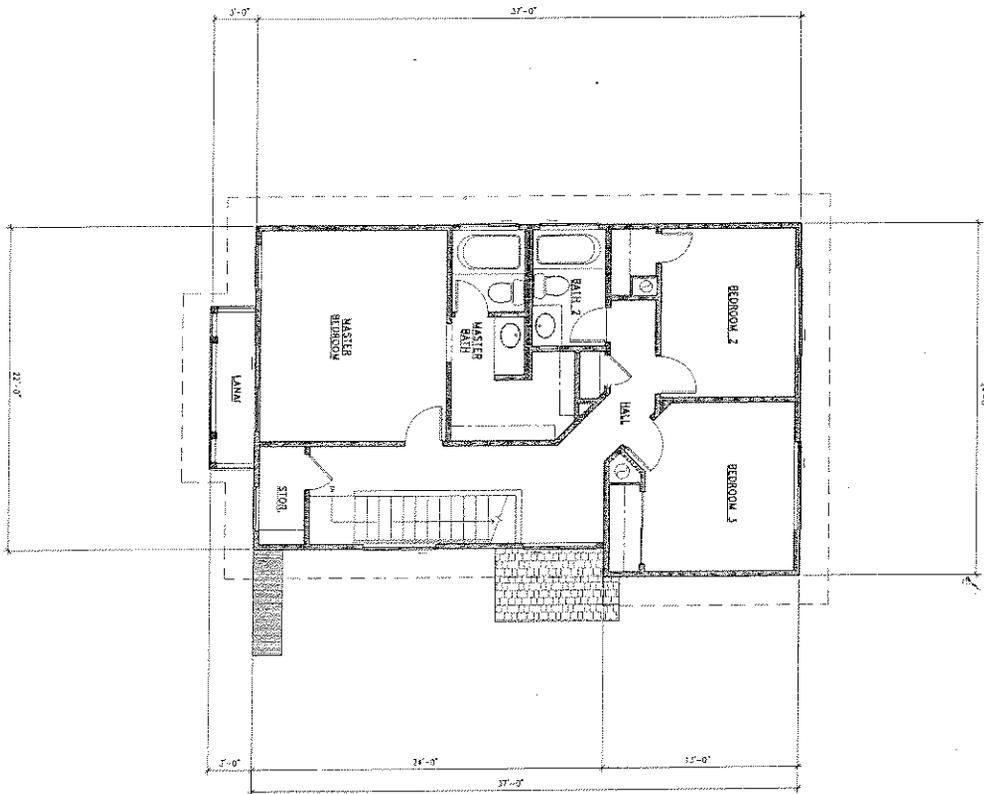
DATE: 06/17/05  
 SHEET NUMBER: S1

DATE: 4.20.08

FIRST FLOOR PLAN



SECOND FLOOR PLAN



AREA 39, TUSCANY 2  
CPR SET



**GENTRY HOMES, LTD.**

160 RI HIMETZ HIGHWAY, SUITE 210  
HAWAII, HAWAII 96817  
(808) 699-6556



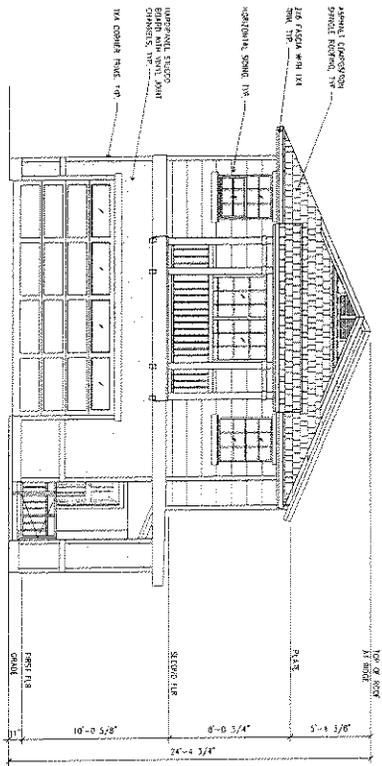
**ROSS ARCHITECTS, LLC**

1111 KALANANĀHUI DRIVE  
HONOLULU, HAWAII 96813  
(808) 551-1111

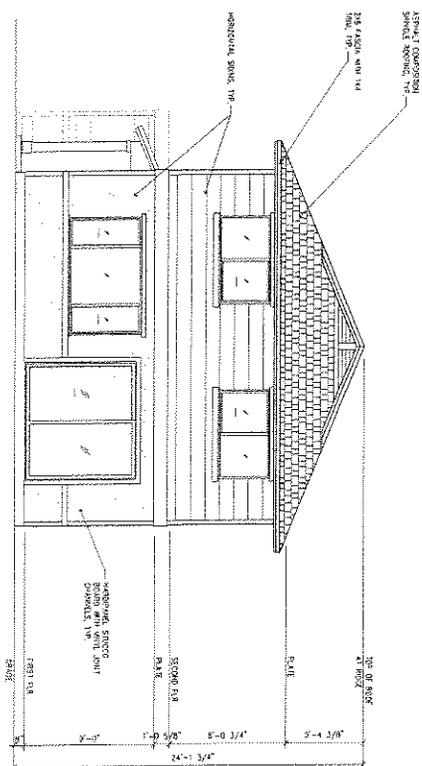


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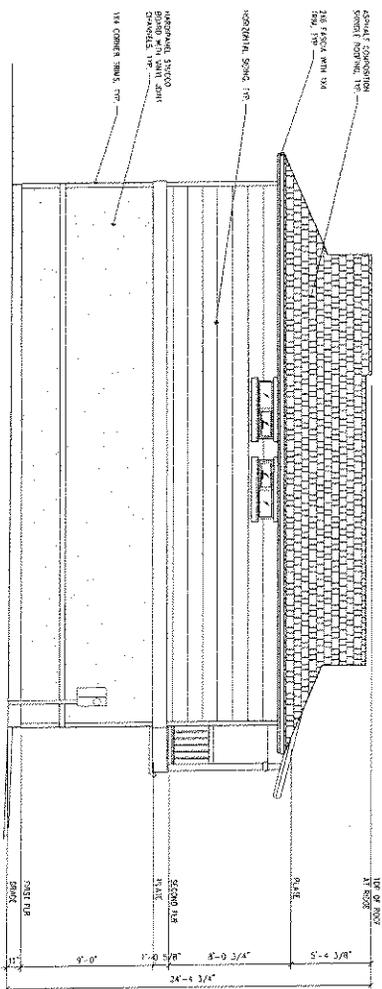
DRAWN BY: J.L.S.  
 CHECKED BY: J.L.S.  
 SHEET NUMBER: A1.1  
 DATE: 11/15/05



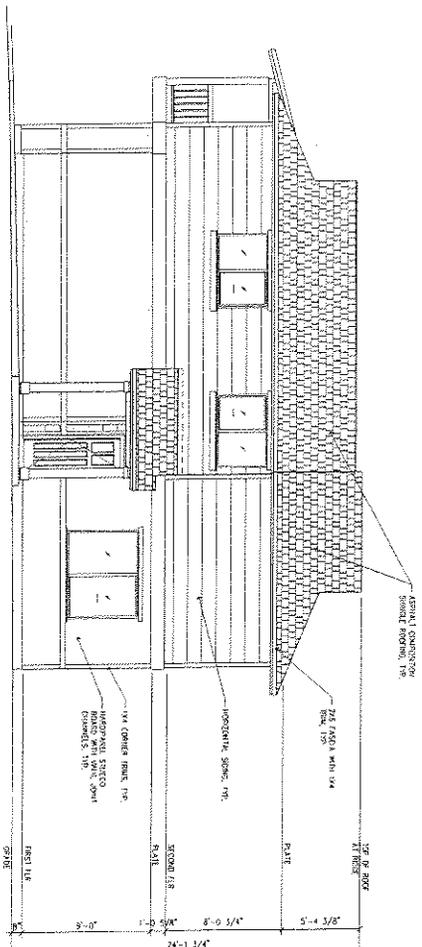
FRONT ELEVATION



REAR ELEVATION



LEFT SIDE ELEVATION



RIGHT SIDE ELEVATION

AREA 39, TUSCANY 2  
CPR SET

DRAWING DESCRIPTION  
PLAN 1  
EXTERIOR ELEVATIONS

NO.	DATE	DESCRIPTION

A1.2



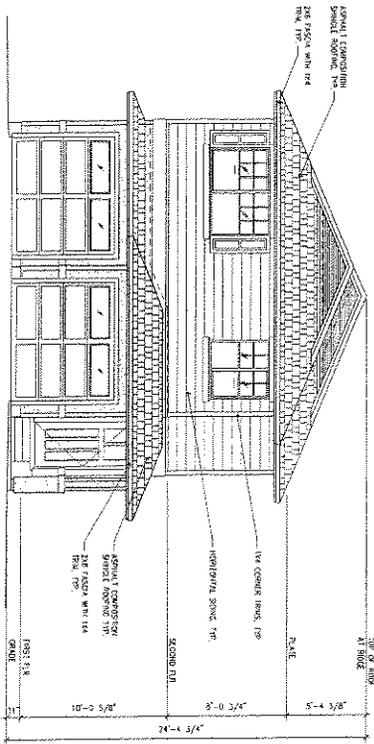
**GENTRY HOMES, LTD.**  
550 N. HANLEY HIGHWAY, SUITE 210  
HOMERUELL PARKWAY, 68817  
(800) 598-6556



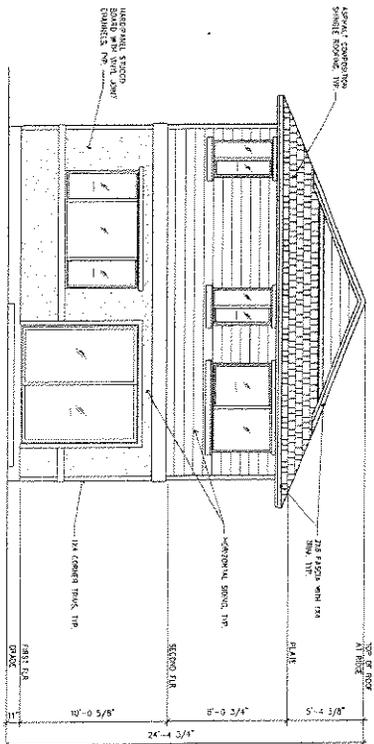
**ROSS ARCHITECTS, LLC**  
10111 KENNEDY BLVD  
SUITE 100, DALLAS, TX 75224  
(214) 343-7311 FAX: (214) 343-0336



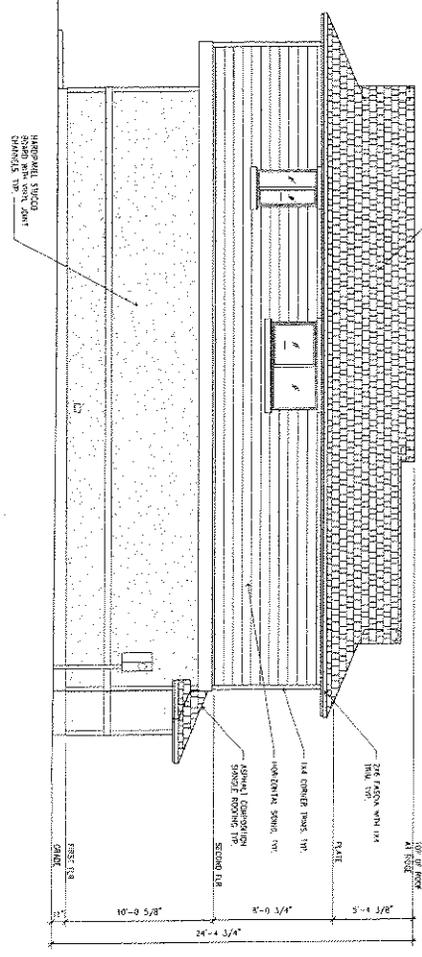




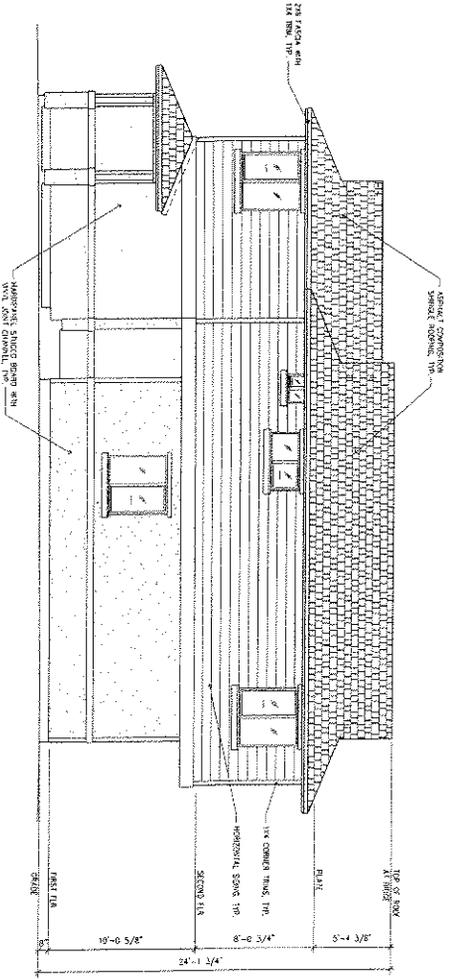
FRONT ELEVATION



REAR ELEVATION



LEFT SIDE ELEVATION



RIGHT SIDE ELEVATION

NO.	DATE	DESCRIPTION

AREA 39, TUSCANY 2  
CPR SET

OWNER: GENTRY HOMES, LTD.  
PROJECT: PLAN 2  
DATE: 11/11/11  
DRAWN BY: J. L. ROSS  
CHECKED BY: J. L. ROSS

**GENTRY HOMES, LTD.**

580 N. AHAHELE HIGHWAY, SUITE 210  
HONOLULU, HAWAII 96817  
(808) 599-5588

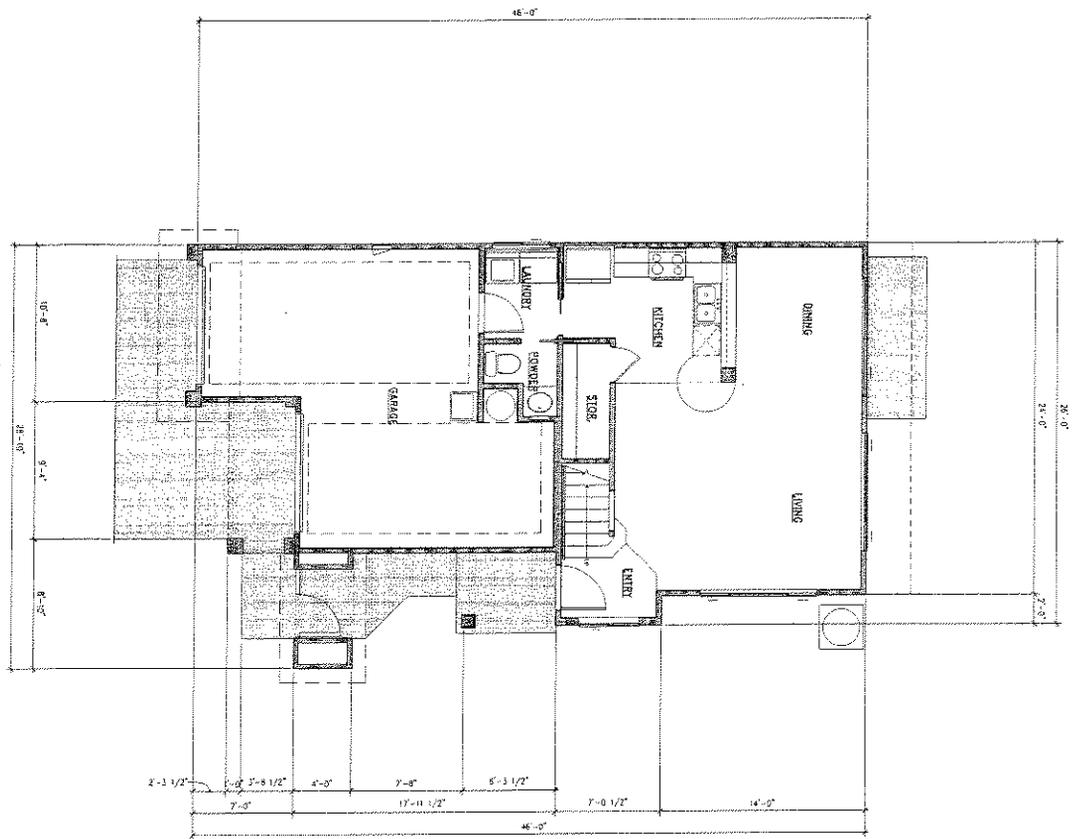
**ROSS ARCHITECTS, LLC.**

1000 KALANANĀHUI DRIVE, SUITE 100  
HONOLULU, HAWAII 96813  
(808) 551-1111

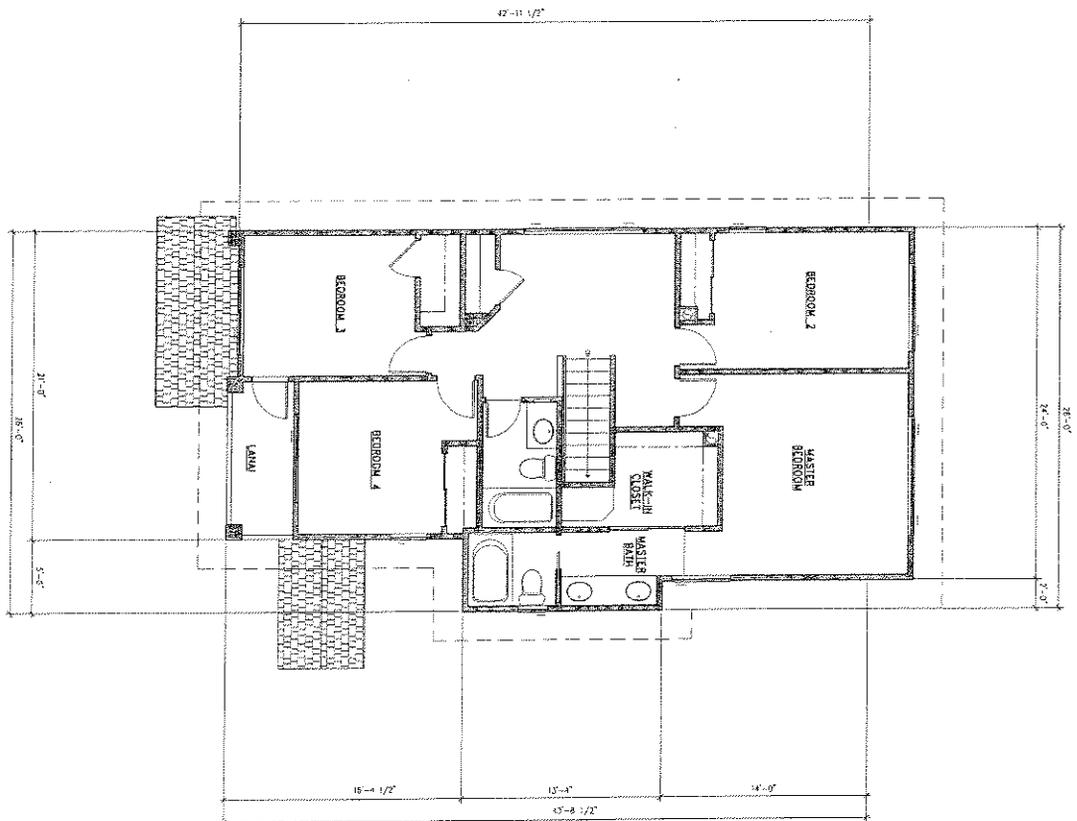
REGISTERED ARCHITECT  
NO. 1000

A2.2

FIRST FLOOR PLAN



SECOND FLOOR PLAN



AREA 39, TUSCANY 2  
CPR SET

DRAWING COORDINATOR  
PLAN 3  
- FIRST FLOOR PLAN  
- SECOND FLOOR PLAN



**GENTRY HOMES, LTD.**  
450 N. HEMATZ HIGHWAY, SUITE 210  
HONOLULU, HAWAII 96817  
(808) 598-3338

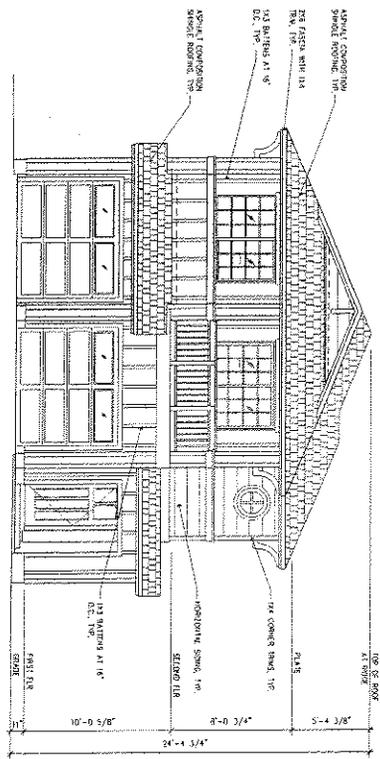


**ROSS ARCHITECTS, LLC**  
1000 KALANOAUE DRIVE  
SUITE 200, HONOLULU, HI 96815  
(808) 943-1111

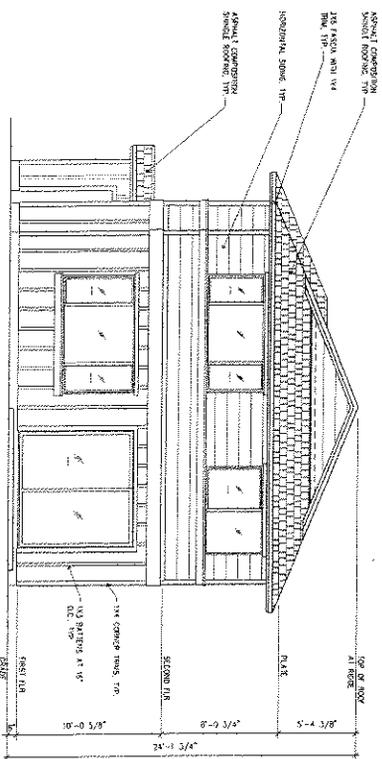


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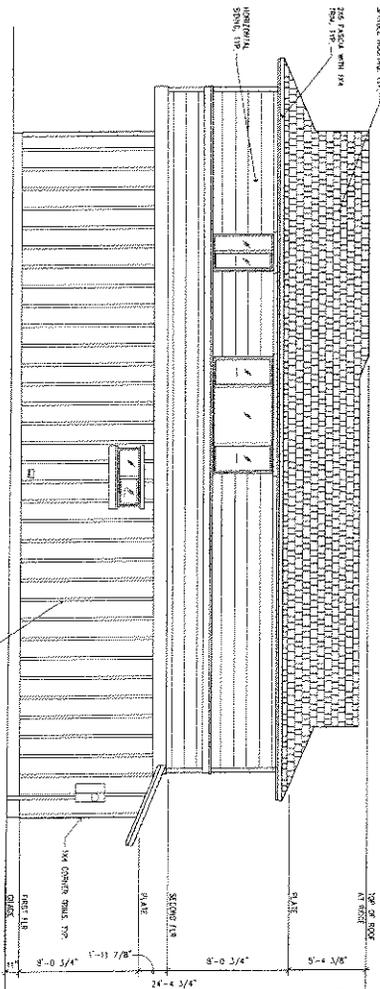
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11/18/18  
11/18/18



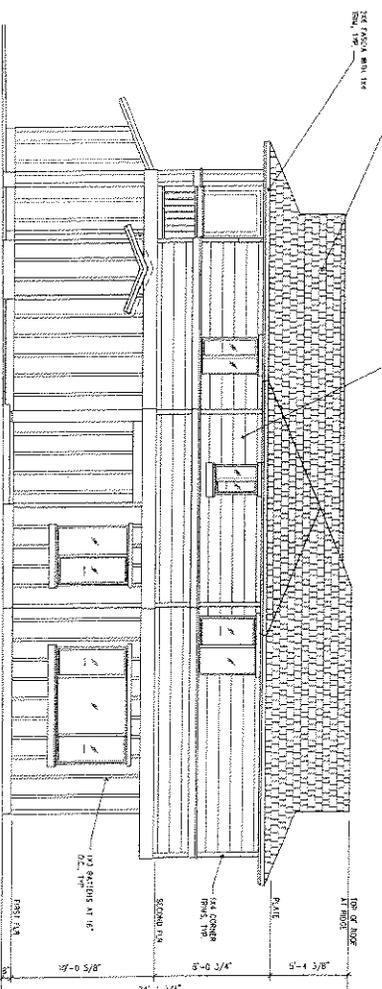
FRONT ELEVATION



REAR ELEVATION



LEFT SIDE ELEVATION



RIGHT SIDE ELEVATION



**GENTRY HOMES, LTD.**

1550 N. HANAUZ HIGHWAY, SUITE 210  
HONOLULU, HAWAII 96817  
(808) 520-5550



**ROSS ARCHITECTS** LLC

1000 KALANANAKU AVENUE, SUITE 100  
HONOLULU, HAWAII 96817  
(808) 520-5550



AREA 39, TUSCANY 2  
CPR SET

PLAN 0  
EXTERIOR ELEVATIONS

NO.	DATE	REVISION

A3.2

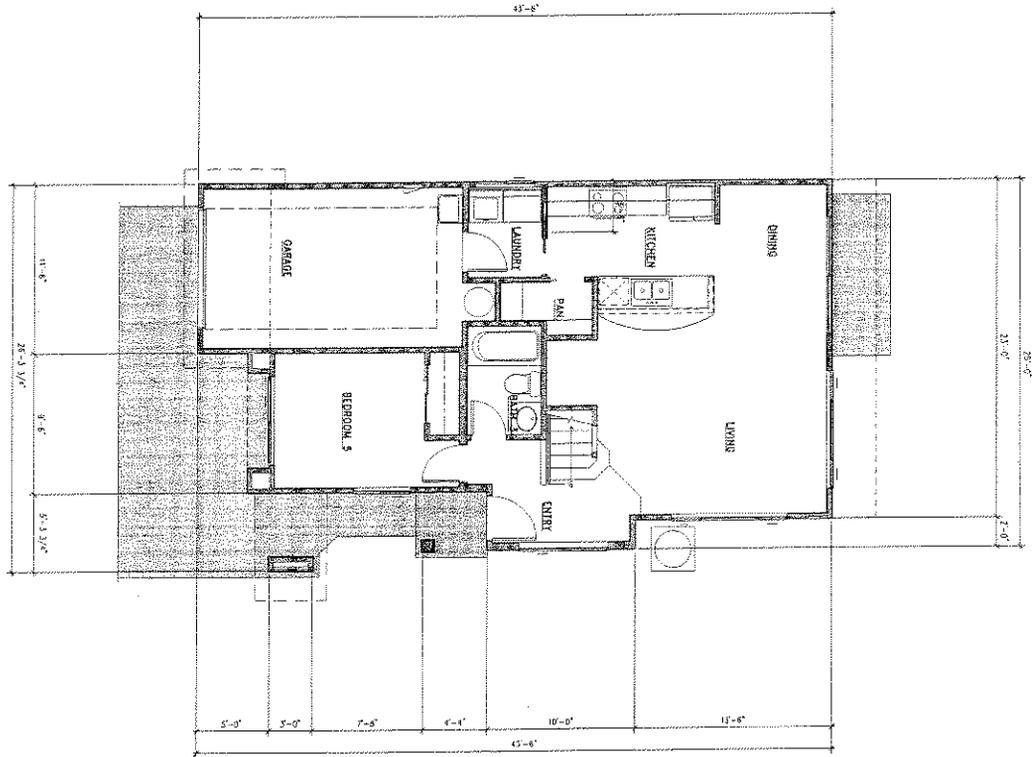
3/11/18

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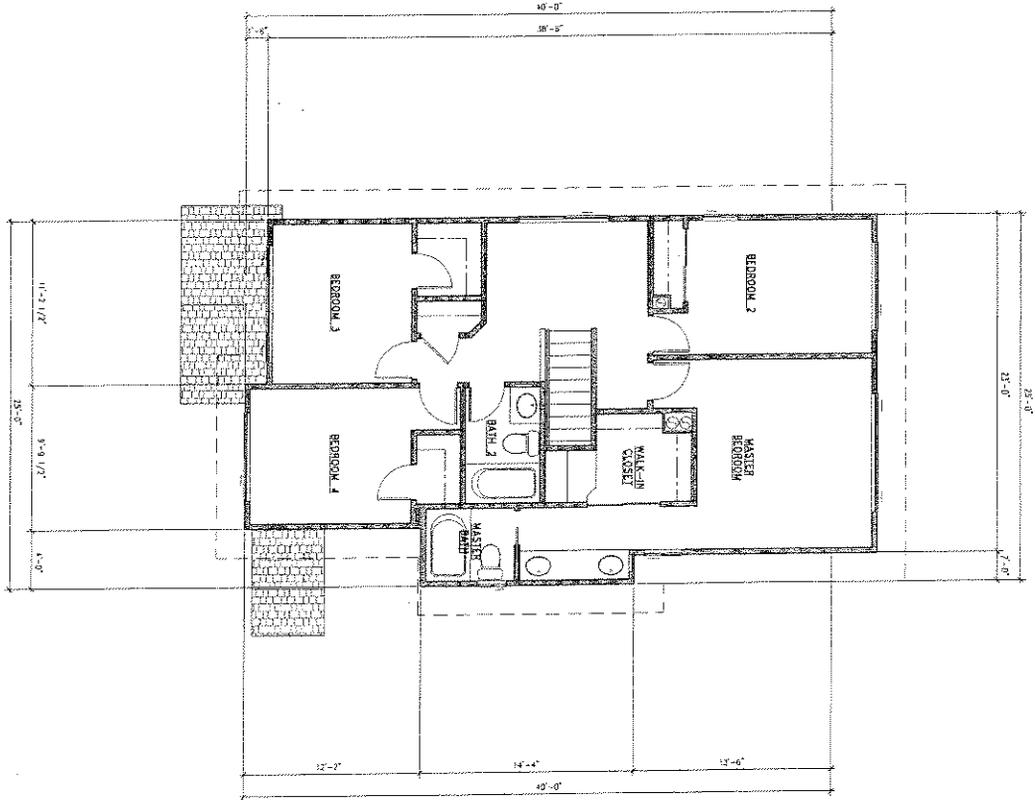
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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LICENSED PROFESSIONAL ARCHITECT  
NO. 96915-C  
DATE: 04/27/18

FIRST FLOOR PLAN



SECOND FLOOR PLAN



NO.	DATE	DESCRIPTION
1	10/17/17	ISSUED FOR PERMITS
2	11/17/17	ISSUED FOR PERMITS
3	12/17/17	ISSUED FOR PERMITS
4	01/17/18	ISSUED FOR PERMITS
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100	01/17/26	ISSUED FOR PERMITS

AREA 39, TUSCANY 2  
CPR SET

CONTENTS OF THIS PLAN SET  
PLAN 4  
• FIRST FLOOR PLAN  
• SECOND FLOOR PLAN

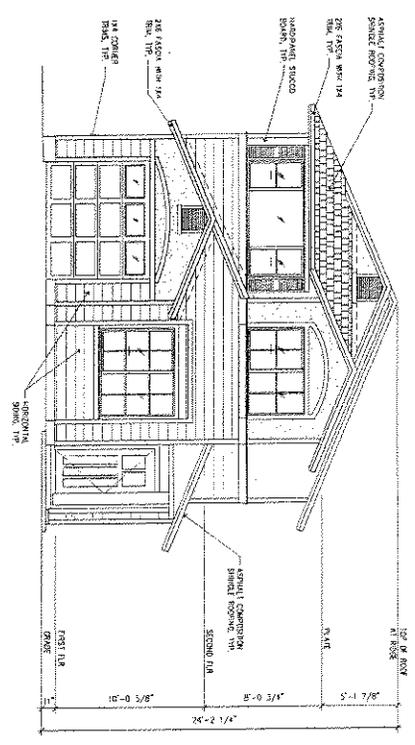


**GENTRY HOMES, LTD.**  
550 N. KAUAI HIGHWAY, SUITE 210  
HONOLULU, HAWAII 96817  
(808) 590-5508

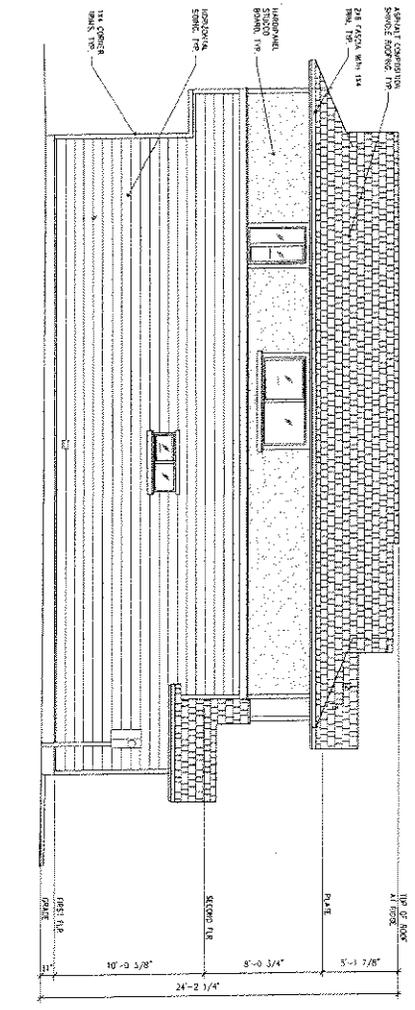


**ROSS ARCHITECTS, LLC**  
1111 KALANANAKU DRIVE, SUITE 200  
HONOLULU, HAWAII 96813  
(808) 441-1111

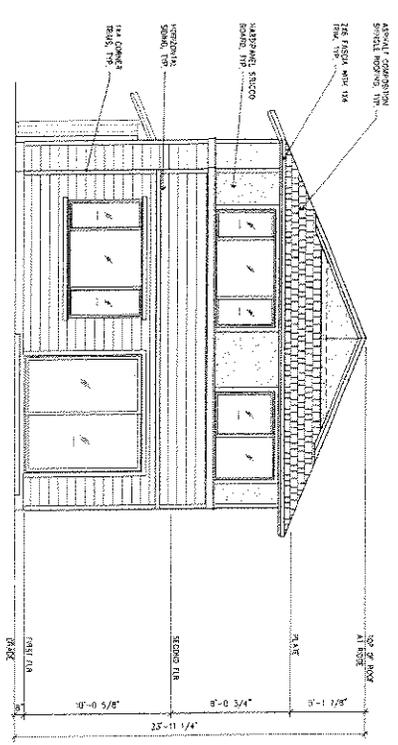




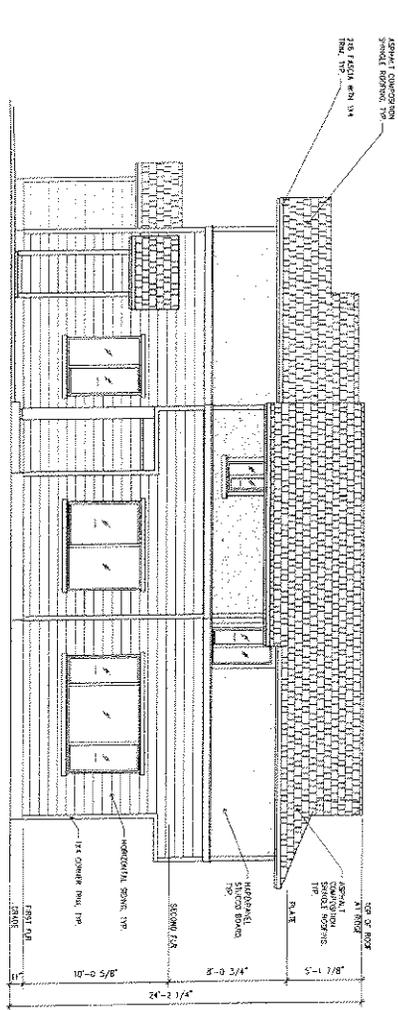
FRONT ELEVATION



LEFT SIDE ELEVATION



REAR ELEVATION



RIGHT SIDE ELEVATION

NO.	DATE	REVISION	DESCRIPTION

AREA 39, TUSCANY 2  
CPR SET

DRAWING DESCRIPTION  
PLAN 4  
EXTERIOR ELEVATIONS

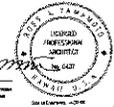


GENTRY HOMES, LTD.

580 N. AMALITY HIGHWAY, SUITE 510  
HONOLULU, HAWAII 96817  
(808) 590-5558

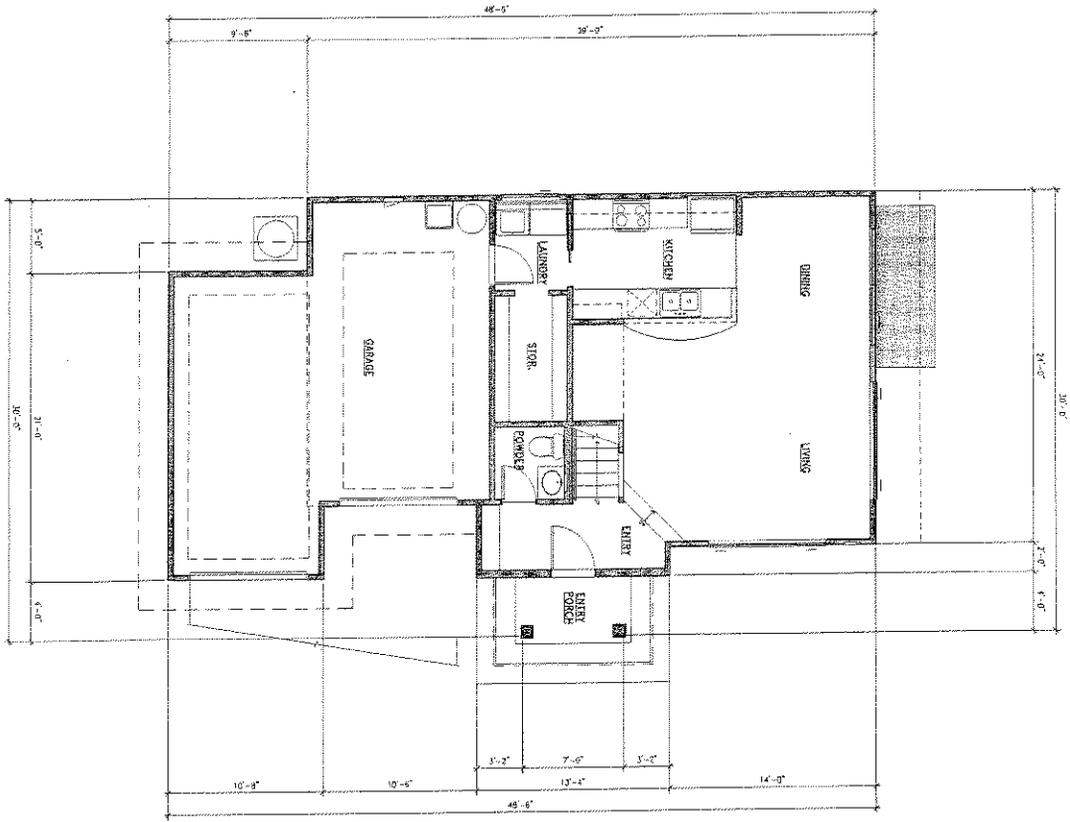


ROSS ARCHITECTS, P.C.  
1000 KALANOAUE BLVD.  
SUITE 200, HONOLULU, HI 96815  
(808) 521-1144 FAX: (808) 521-1145

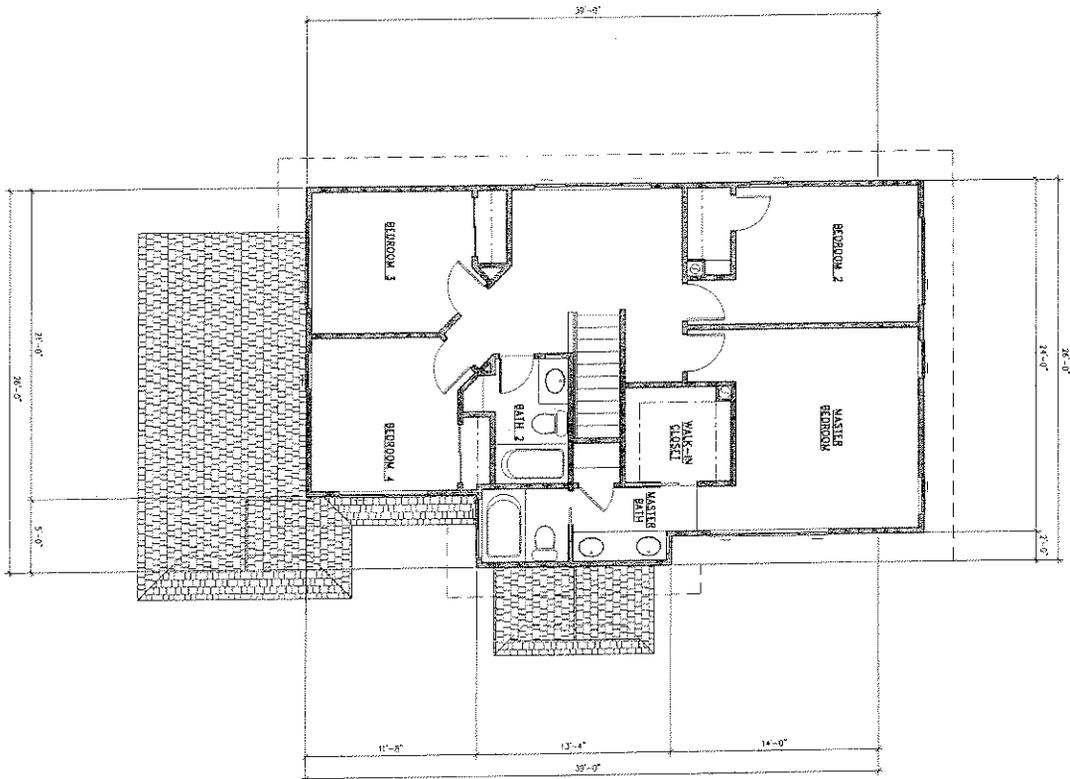


A4.2

FIRST FLOOR PLAN



SECOND FLOOR PLAN



AREA 39, TUSCANY 2  
CPR SET

- DRAWING DESCRIPTION
- PLAN 5
- FIRST FLOOR PLAN
- SECOND FLOOR PLAN



**GENTRY HOMES, LTD.**  
550 N. HWY 210  
FOND DU LAC, WISCONSIN 54601  
(808) 599-5538

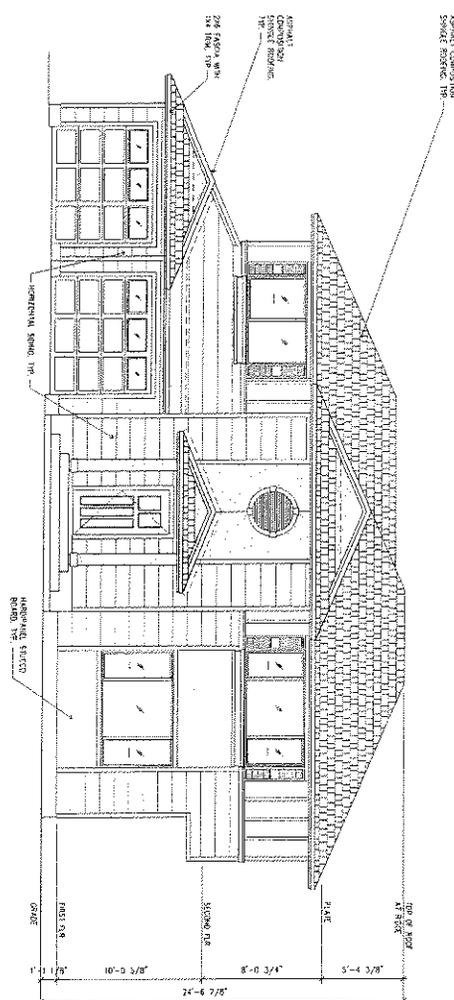


**ROSS ARCHITECTS, LLC**  
1100 N. HWY 210  
FOND DU LAC, WISCONSIN 54601  
(808) 599-5538

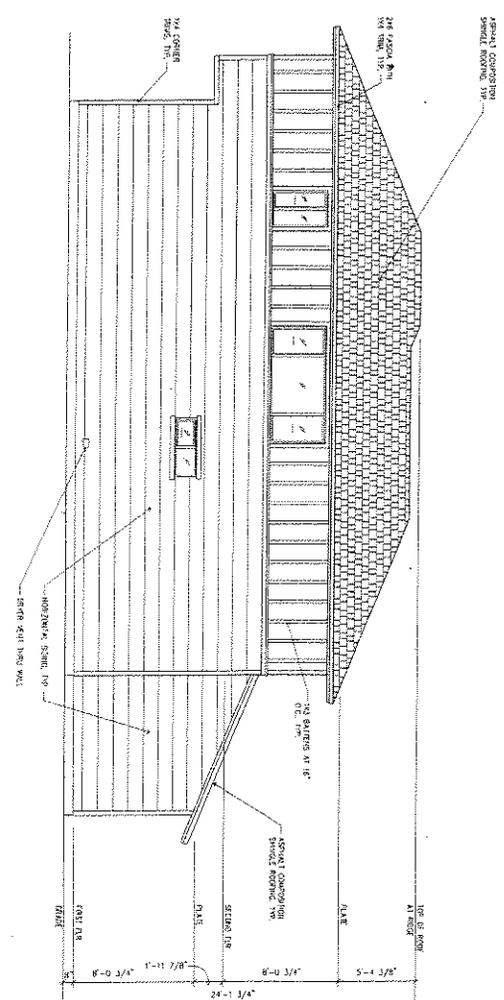


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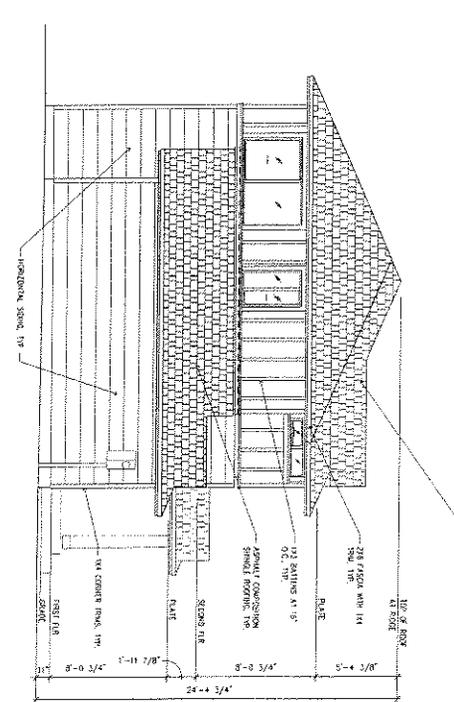
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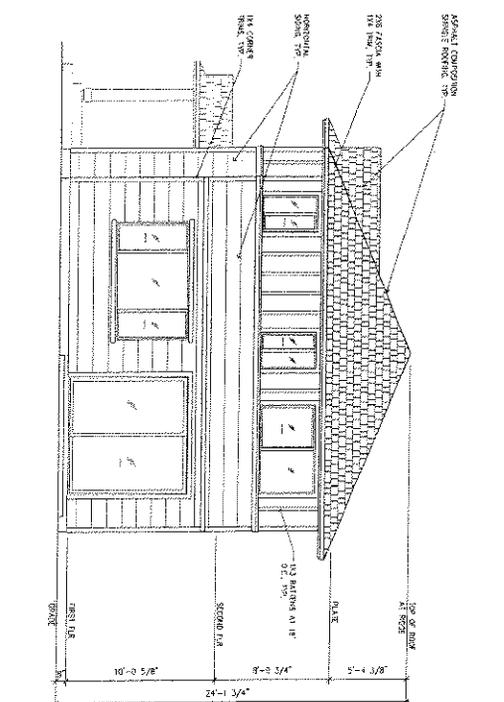
FRONT ELEVATION



REAR ELEVATION



LEFT SIDE ELEVATION



RIGHT SIDE ELEVATION

AREA 39, TUSCANY 2  
CPR SET



**GENTRY HOMES, LTD.**  
560 N. KAMELE HIGHWAY, SUITE 210  
HONOLULU, HAWAII 96817  
(808) 599-5558



**ROSS ARCHITECTS, LLC**  
100 W. KALANANAKU AVENUE, SUITE 200  
HONOLULU, HAWAII 96820  
(808) 943-1111



NO.	DATE	DESCRIPTION

DRAWING DESCRIPTION  
**PLAN 5**  
 - EXTERIOR ELEVATIONS

SHEET NUMBER  
**A5.2**

EXHIBIT "N"

**RULES AND REGULATIONS  
OF THE ASSOCIATION OF APARTMENT OWNERS OF  
MONTECITO/TUSCANY III**

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These Rules and Regulations for MONTECITO/TUSCANY III (the "Project") are designed to preserve the Project's reputation and desirability and to ensure that all residents have maximum use and enjoyment of their unit and limited common areas and the Project's common areas. These Rules will be enforced by the Board of Directors of the Association of Apartment Owners of the Project or by a managing agent at the direction and under the supervision of the Board. The Association may amend these Rules at any time as provided for in the Association's By-Laws.

Each owner (as defined in the Association's By-Laws) is responsible for ensuring that all persons he or she invites into the Project to live (such as a tenant), to visit (such as a guest) or to do work (such as a delivery person or tradesman) abides by these Rules.

**I. USE OF UNITS GENERALLY.**

1. **Use.** The units may be used as private dwellings only. Self-employed persons may conduct business from his or her unit, as long as he or she has the necessary permits, licenses and approvals, has no employees working for him or her in the unit and does not advertise or offer a product or service from the unit such that there would be additional congestion, traffic or noise from the unit.

2. **Garages.** Garages shall be used for parking operational vehicles only and for incidental storage. Owners must be able to park their vehicles in the garage and, if applicable, the uncovered parking stall adjacent to the garage at all times.

3. **Short Term Leasing Prohibited.** Leasing of the units for periods shorter than thirty (30) days is prohibited.

4. **Condition of Units; Maintenance.** Residents must keep their units in a clean and sanitary condition so that the soundness of the buildings is not affected. Maintenance of all internal systems, including plumbing and electrical shall be the owner's responsibility. Any damage from misuse shall be the owner's responsibility.

5. **Nuisances.** Any noxious or offensive use of a unit or behavior of a resident that deprives other residents from the peaceful possession and enjoyment of their units is considered a nuisance and shall not be permitted. The Board of Directors has the discretion to determine if any use of a unit or any behavior of a resident is a nuisance or an annoyance to others. The Board of Directors may then direct the managing agent to notify the offending owner to cease such nuisance or annoyance.

6. **Noise.** All residents shall avoid excessive or disturbing noise of any kind at any time. Stereos, radios and televisions should be played at reduced volume before 7:00 a.m. and after 10:00 p.m. on weekdays, and after 12:00 midnight on Fridays, Saturdays and Sundays. Any noise from parties or people leaving the Project at night must be kept to a minimum. Excessive noise at any time should be reported to the managing agent who will take appropriate action.

7. **Hazardous Materials.** Residents shall not use any illumination other than electric lights, or bring into the buildings any flammable oils or fluids such as gasoline, kerosene,

naphtha or benzene, or other explosives or other articles deemed hazardous to life, limb or property, other than a small amount of gasoline for use in a lawn mower or propane for a propane barbecue.

8. **Illegal/Dangerous Activities.** No illegal activities of any kind may be conducted in the Project and any unit. No activity shall be engaged in and no substance introduced into or manufactured within any unit which might result in the cancellation of insurance or increase in the insurance rate on the buildings on the premises.

## II. COMMON AREAS.

1. **Yard Areas.** Certain yard areas facing the roadways are common areas that will be landscaped and maintained by the Association. The irrigation systems servicing the common areas directly abutting a unit will be connected to the non-potable well for the Project. All owners must take care not to damage or tamper with the landscaping and the irrigation system.

2. **Personal Property.** No items of personal property shall be left on any of the common areas. Articles of any kind left in any of the common areas or common elements will be removed at the owner's risk and expense at the direction of the Board.

3. **Sidewalks.** All sidewalks must remain clear at all times and shall not be used for any other purpose other than ingress and egress unless otherwise permitted by these Rules. Vehicles parked in driveways must not block sidewalks in any way.

4. **Trash Disposal.** All trash containers must be taken to the designated pick-up location prior to rubbish pick-up. Trash containers may be taken to the designated pick-up area the night before pick-up. If City and County trash containers have not yet been issued, all trash can lids must be attached to their cans in some fashion so that they do not get lost or separated. Trash containing food shall be securely wrapped or enclosed in a plastic trash bag before being placed in a receptacle. All trash containers must be removed from the pick-up area by that evening.

5. **Moving.** Advance notice must be given to the managing agent when household goods or large items of furniture are to be moved to reduce traffic congestion and disturbance within the Project. Please notify your neighbors if you anticipate that large trucks or moving vans will create noise or traffic for a period of time.

6. **Parking and Roadways.** Speeding limits within the Project will be enforced by the managing agent or the Board. There shall be no parking in the roadways, other than in designated stalls. Unauthorized parking in common areas shall be towed at the owner's expense. If the violator is a guest of an owner, the owner is responsible for all towing expenses. There shall be no playing in the roadways. The Board has the authority to promulgate more stringent rules and penalties if parking becomes a traffic and aesthetic problem. Guest may park in the driveways appurtenant to each home as long as vehicles do not extend into the roadway.

7. **Workmen and Deliveries.** All work or delivery persons must use the visitor parking stalls or must use the garage designated for the unit he is servicing.

## III. LIMITED COMMON AREAS.

1. **Fenced Yard Areas; Fences.** Owners are responsible for maintaining the fenced yard areas in a clean and neat manner. Owners must keep all swales, ditches and drainage ways

within their yard areas free of debris, open and in good operating condition. Owners may not alter the drainage pattern of the yard area shown on the building plan for the unit. All owners of adjoining fences are jointly responsible for the maintenance and replacement of these privacy fences adjoining their homes.

a. Owners must seek Board approval for adding additional concrete patios or structures in any fenced yard areas. The Board of Directors may promulgate specifications for creating additional lanais in fenced yard areas.

b. Owners must plant trees that are from an approved list provided by the Board of Directors. This is to prevent aggressive root systems from damaging foundations and structures.

c. Owners must maintain the twenty-four inch (24") gravel strip that surrounds the Unit. Owners must not plant or allow anything to grow in this gravel strip. Any alteration in design of this gravel strip must not impair the termite warranty and must first be approved by the Board of Directors. The Board has the discretion to request an owner to modify any landscaping within the fenced yard areas should the Board determine that it may affect the structural soundness of the fences or buildings.

2. **Barbecuing.** Fires, open flames, hibachis or grills of any kind shall not be permitted on the common areas. Hibachis or grills are permitted in the fenced yards of each unit provided that non-chemical firestarters are used, fire extinguishers are readily available, and provided that adequate provisions are made to control smoke and flames so as not to cause hazard or annoyance to neighbors.

3. **Driveways.** Driveway parking is intended for guest parking only. If an adjacent uncovered parking stall is included with the property, it may be used for parking operational vehicles only. Storage use is strictly prohibited.

#### IV. BUILDING MODIFICATIONS.

1. The backside of any drapes, blinds or other window shading devices which is visible from neighboring property through the window shall not be of bright or conspicuous color but rather white, off white, beige or other inconspicuous shade. Any other color must be approved in writing by the Board of Directors.

2. Window tinting must be approved in writing by the Board of Directors.

3. Exterior paint colors must be approved in writing by the Board of Directors.

4. Residents shall not, without the written approval of the Board of Directors, do any structural changes to the unit, install any wiring for electrical or telephone installations, machines, awnings or air conditioning units or other equipment, fixtures, appliances or appurtenances whatsoever on the exterior of the property or protruding through the walls, windows or roof. Any changes shall not overload or impair the floors, walls, or roofs of the building, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance maintained by or for the Association.

5. No private outdoor radio, television or other antenna will be erected or installed on the exterior of any building or anywhere on the premises without approval by the Board of Directors.

6. All repairs and installations and other work done in the unit or its limited common areas must be performed by a licensed contractor. The owner must provide proof of such licensing upon request of the Board or the managing agent.

None of the above provisions are intended to contravene the State or Federal Fair Housing Act. The Board will at all times comply with the provisions of the Fair Housing Act when acting upon requests by handicapped persons to make reasonable modifications to the common areas to allow full enjoyment of the Project. Costs of such alterations shall be borne by the requesting residents. The Board shall also comply with the Fair Housing Act when acting upon requests by handicapped persons for exemptions from any of the provisions of the Project documents which may interfere with said handicapped persons' equal opportunity to use or enjoy their units and the common elements of the Project.

V. **INSPECTIONS.** The Board of Directors may institute regular inspections of the common elements and limited common elements to ensure compliance with these Rules.

VI. **PETS.**

No livestock or poultry shall be allowed in the Project. Only a reasonable number of common household pets such as dogs, cats, guinea pigs, rabbits, birds or fish and may be kept inside the units and in the limited common areas for the unit; provided they shall not be kept, bred or used for any commercial purposes. Any pet causing a nuisance or unreasonable disturbance shall be promptly and permanently removed upon notice by the managing agent at the direction of the Board of Directors. All pets (except fish) must be registered with the managing agent.

Animals are not allowed on the common elements except when carried on a leash. Owners must immediately clean up any droppings left by their pets on any common areas. Certified guide dogs, certified signal dogs and certified service dogs are allowed on the common elements while on a leash as long as they are accompanied by their owners at all times.

If certified guide dogs, certified signal dogs or certified service dogs cause a nuisance, the handicapped resident shall be responsible for abating the nuisance within a reasonable time. If the handicapped resident is unable to abate the nuisance, the dog must be removed from the Project. The resident will be given a reasonable amount of time to replace the dog before he is required to remove the dog causing the nuisance.

VII. **ENFORCEMENT.**

1. **Owners' Responsibility to Remedy.** All owners are responsible for ensuring that their residents, guests and invitees abide by these Rules. Owners will be held responsible for any infractions, regardless of whether they are at fault. If the owner is unable to enforce these Rules, he shall, at the request of the managing agent or the Board, remove the noncomplying person from the Project. Every owner shall do whatever is necessary to remedy any violation at his own expense. The cost of repair or replacement of any damage to the common areas and any legal fees incurred may be assessed by the Board against the person or persons responsible, including, but not limited to, against owners or occupants for damages caused directly or indirectly by their guests.

2. **Board Enforcement of Rules.** All violations of the Rules and damages to the common elements or common areas will be enforced by the Board and shall be reported promptly to the Board or the managing agent. The Board may use reasonable discretion in promulgating reasonable fines and penalties for violating these Rules.

3. **Owner to Pay Fees and Costs.** Owners shall be responsible for paying any expenses incurred due to violations of these Rules, including reasonable attorneys' fees.

4. **The Violation of Any House Rules Adopted by the Association of Apartment Owners Shall Give the Board of Directors or Its Agents Right To:**

**ENTER THE UNIT IN WHICH, OR AS TO WHICH, SUCH VIOLATION OR BREACH EXISTS AND TO SUMMARILY ABATE AND REMOVE, AT THE EXPENSE OF THE DEFAULTING OWNER, ANY STRUCTURE, THING OR CONDITION THAT MAY EXIST THEREIN IN VIOLATION OF THESE RULES AND REGULATIONS, THE BY-LAWS OR THE DECLARATION; AND THE BOARD SHALL NOT THEREBY BE GUILTY OF ANY TRESPASS; PROVIDED, HOWEVER, THAT NOTWITHSTANDING THE FOREGOING, THE BOARD SHALL HAVE SUCH RIGHT OF ENTRY ONLY IN THE INSTANCE WHERE SUCH VIOLATION OR BREACH CONSTITUTES AN IMMEDIATE, SUBSTANTIAL AND UNDENIABLE THREAT TO LIFE, LIMB OR PROPERTY OF ANY OWNER, MEMBER OF HIS FAMILY, TENANT, GUEST, LICENSEE OR INVITEE; OR**

**TO ENJOIN, ABATE OR REMEDY BY APPROPRIATE LEGAL PROCEEDINGS, EITHER AT LAW OR IN EQUITY, THE CONTINUANCE OF ANY SUCH BREACH, AND ALL COSTS THEREOF, INCLUDING ATTORNEYS' FEES, SHALL BE BORNE BY THE DEFAULTING OWNER; AND**

**TO ASSESS REASONABLE FINES AND PENALITIES, THE ACCRUAL OF WHICH SHALL BE TREATED IN A MANNER CONSISTENT WITH THE TERMS OF THE CONDOMINIUM DOCUMENTS.**

#### **VIII. MISCELLANEOUS.**

1. **No Soliciting.** No solicitation or canvassing will be allowed in any building or on the common areas at any time.

2. **Signs.** Signs shall not be placed on the units or in the common areas except those previously approved by the Board.

3. **Access.** The managing agent shall not give any person access to a unit without the written permission of a responsible owner.

4. **Registration with Managing Agent.** Residents shall file their name, address and phone number and signature with the managing agent upon purchasing and/or taking occupancy of a unit, and shall furnish the Board and/or the managing agent with such other reasonable information as shall be requested from time to time.

5. **Absent Owners.** Absent Owners shall be responsible for designating a local agent to represent their interest if they will be absent from the unit for more than thirty (30) days. Such owners shall file with the managing agent their out-of-town address and telephone number and the address and telephone number of their agent.

An absent owner, at his expense, shall have an agent, friend or domestic employee conduct periodic inspections of his closed unit and assume responsibility for the contents of the unit.

6. **Tenants.** Owners must provide the Managing Agent with the name, address and phone number of any tenants living in the apartment and for the Owner.

7. **Workmen.** No workmen will be allowed on the premises before 8:00 a.m. or after 7:00 p.m., except in an emergency.

8. **Employees of Association.** Maintenance employees of the Association are under the sole direction of the managing agent, and during their working hours they shall not be diverted to the private business or employment of any resident. No employee shall be asked by a resident to leave the common elements for any reason.

**IX. AMENDMENTS.**

These Rules may be amended only by a majority vote of the owners at a meeting of owners duly called and held in the manner provided for in the By-Laws of the Association or by a majority vote of the Board of Directors at a duly called meeting.

The Developer acting as the initial Association of Apartment Owners hereby adopts the foregoing House Rules as the House Rules of The Association of Apartment Owners of MONTECITO/TUSCANY III Condominium Project on behalf of the Association, this

\_\_\_\_\_  
GENTRY HOMES, LTD.  
a Hawaii corporation

By \_\_\_\_\_  
DAWN SUYENAGA  
Its Vice President/Secretary

“Developer”